



RESERVATION POLICY: SOCIAL JUSTICE
AN EMPIRICAL STUDY OF SCHEDULED CASTES IN THREE
DISTRICTS OF UTTAR PRADESH WITH SPECIAL
REFERENCE TO DR. B. R. AMBEDKAR

ABSTRACT
THESIS

SUBMITTED FOR THE AWARD OF THE DEGREE OF

Doctor of Philosophy
IN
LAW

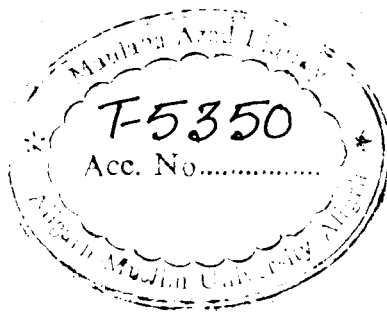
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ABSTRACT

India has a long history of caste ridden society. The social relations are based on caste identification. In this social phenomena an integrated society cannot be formed. Moreover due to unequal distribution of educational and economic opportunities, a large portion of population suffered socially and educationally and remain backward. The backwardness, developed either due to economic causes or was embodied in socio-religious conditions, has proved to be a great stumbling block in the way of nation's progress and unity.

Roots of reservation policy for scheduled castes in India lay deep in past. To be true, reservation policy as an accepted constitutional policy are the fruits borne by the tree of Hindu civilization. The hierarchical social order was created over centuries with a view to preserve the monopoly of social status, property and education by the higher caste Hindus. As a result, property, education, freedom, justice, progress and prosperity was denied to the people of lower castes. Downtroddens in the Hindu society were stripped off the even equitable opportunities for political social, economic and educational development. The caste system bestowed hierarchically graded privileges on some section of society and inflicted a series of disabilities to the generation. Opportunities of growth and development were controlled and usurped by the higher castes with the result that the downtrodden were deprived and discriminated, symbolising a powerful institutional pattern of exploitation and suppression of the weak by the strong. In the Indian stratification of society, the scheduled castes constitute an important stratum, not because they form about 15 percent of India's population, but because they occupy a unique position as

untouchables. Thus the resurrection of the people who were known compendiously as the scheduled castes and treated hitherto as 'casteless', 'out castes' and untouchables', oppressed by and subject to every manner of deprivation and discrimination for centuries after centuries, by a unique system of social and economic segregation, 'graded inequality', 'gradation and degradation' and 'gigantic cold blooded repression' and prevented even from protesting their plight.

All this compelled our wise founding fathers to adopt policy of social justice with an emphasis on compensatory discrimination as an equaliser to those who were too weak socially and economically in the caste ridden Indian Society. They took special notice of the down trodden and obligated the state to promote with special care the educational and economic interests of the weaker sections of the society i.e. the Scheduled Castes and Scheduled Tribes and to protect them from social-injustice and exploitation. The constitution also provided, that the state should strive to promote the welfare of the people and in particular to minimise the inequalities in income, status, facilities and opportunities, amongst individuals and groups of people, residing in different areas or engaged in different vocations. On these broad principles was based the concept of equality of opportunity in matters of public employment, that no citizen should on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of any employment or office under the state. The state was also directed not to discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. This direction attracted the attention of the Government within 15 months of the inception of the constitution.

It was apprehended that any special provision for the

educational, economic or social advancement of any backward class of citizens in order to implement the mandate of the constitution might be challenged on the ground of discrimination. Therefore 15(4) was added, so as to offset the affect of fundamental right of citizens. which directed the state not to deny admissions into any educational institution maintained by the state or receiving aid out of state funds. on grounds only of religion, race, caste language or any of them. The law now empowered the Government to make special provision for the advancement of socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes. The bed-rock of the 'Egalitarian social order', conceived in the constitution, became later on the basis of reservations.

However, though the Government got a free hand to advance the cause of Scheduled Castes and Scheduled Tribes, it had in its. way the mandate of 'Check and balance', conceived in Article 335 of the constitution. This provision remained always the source of defence of the privileged to brow-beat the under-privileged. The reservation of seats for Scheduled Castes and Scheduled Tribes were also made in the parliament and state legislatures. It is however the matter of great dissatisfaction that period of reservation has been repeatedly extended four times but still these classes are at the same position where there were two hundred years ago bearing a few who have monopolised all the benefits designed for these poor brethren. The general opinion is that the benefits of reservation policy by and large have been snatched away by the top creamy layer of the Scheduled Castes, thus keeping the weaker of the weak always weak and leaving the fortunate layers to consume the whole cake.

In the view of the above background the present study is an attempt to see to what extent the beneficiaries of reservation policy

have been benefitted in the light of constitutional commitment. An endeavour is made to assess the impact of various measures adopted for the welfare of the Scheduled Castes. An attempt is also made to examine empirically the political, social, economic and educational impact in considerable detail. An earnest attempt is also made to find out the extent of progress which these people have been able to achieve by the virtue of constitutional safeguards in due course of time. A special attention has been given to see how far the traditional caste system and practice of untouchability have undergone a qualitative change.

For the purpose of conducting the present empirical study the following hypothesis have been raised. Firstly the reservation policy has build up a sound political environment that scheduled caste people have enabled them selves to regain their confidence to shore their political power on equal footing with other sections of society at village, state and national levels. Secondly, the government has adequate and satisfactory administrative apparatus for the implementation of the constitutional safeguards to Scheduled Castes and has achieved a great deal of success in removal of untouchability and healthy environment of casteless society. Thirdly the reservation policy has enabled the Scheduled Castes to change their standard of living and sunken status. Fourthly the reservation policy has generated an educational environment by which they are able to equip themselves with other sections of society on equal footing in various walks of their life. Fifthly, the claims of Scheduled Castes in matter of public employment have been given due consideration while making appointments in service with the result that they are now adequately represented in the service sector in accordance with the spirit of Article 16(4). Sixthly, the benefits of reservation have

reached evenly to all Scheduled Castes in the light of constitutional philosophy. Seventhly the beneficiaries have sufficient awareness about the welfare programmes and constitutional safeguards designed for them. Lastly the execution of constitutional safeguard in favour of scheduled castes has enabled them to come at par with the other sections of society and hence the time has come to discontinue the reservation policy in the larger interest of the other sections of the society.

The present study has been restricted to Aligarh, Agra and Rampur districts of Uttar Pradesh. The reason to confine the present study to these districts is that these districts are densely populated with the Scheduled Castes and the field survey was very easily taken.

In order to find the answers of the hypothesis. A carefully structured questionnaire was prepared. A list of respondents in the five rural and urban areas in the three districts was prepared and a number was allotted to each of them. A random table was used to select the respondents from each district. The main features of the study and the method of completing the questionnaire was explained to them. An interview diary was also maintained which was used during group discussions with different respondents. This method proved to be useful and meaningful wherever the questionnaire method did not work in getting a clearer and broader prospective of the problem.

The data obtained from the questionnaire were transferred to a mastersheet after carefully edited it Simple statistical root like percentage was used. Group discussions and personal interviews were analysed qualitatively.

In the porcess of present study and research the Doctrinal Research Methodology was also adopted relying on the material

available in the library, the same cannot be completed because in order to evaluate the working of central legislation applicable to scheduled castes and scheduled tribes the decisional work in three districts was relied on.

To facilitate the present study the whole work is divided in different chapter's to achieve logical conclusion on the basis of systematic study. Chapter-I deals with the historical background of Hindu caste system. An indepth study is made for the analysis of Hindu caste system from its origin till date and about its relevance and fatility. Dr. Ambedkar's ideology on Hindu caste system is discussed in detail in which he argued for a cohesive society which would certainly eradicate the evils of caste system and bring the downtrodden classes into the mainstream of natural life.

Chapter II covers the definitions, constitutional concept and scope of social justice. This chapter also deals with the social frame work of social justice and egalitarian ideology of Dr. B.R. Ambedkar. He was the man who played a major role in the quest for constitutional rights and social justice in the Constituent Assembly.

Chapter III deals with the definition and the constitutional concept of scheduled caste Dr. Ambedkar's struggle for the upliftment of Scheduled Castes and his attempt to maintain separate identity for Scheduled Castes has been discussed in detail in this chapter.

Chapter IV deals with the concept of Reservation and its purpose for the upliftment of traditionally neglected sections. Socially and economically. The chapter also includes the fixation of quotas in legislative bodies, in educational institutions and in public employment. Second part of the Chapter deals with the speeches of Dr. B.R. Ambedkar in the constituent Assembly where he was

remembered as a Principal architect of the constitution for his valuable contributions for the depressed classes.

Chapter V of the instant work deals with the provisions for reservation in the constitution of India Land mark judicial pronouncement regarding the issues like who are the backward classes, what is the criteria of backwardness, what is the limitation of reservation and can a balance be maintained among competing equalities.

Chapter VI deals with the special provisions relating to reservation of seats in different houses of parliament and in state legislature. Articles provided for the appointment of special officer and their functions are discussed in detail in this chapter.

Chapter VII deals with the Data Analysis. It includes method of selection of respondents from the required three districts of Uttar Pradesh. Responses obtained through the questionnaire and the comparative analysis of the data of three districts is done in this chapter and finally the summary of findings are also discussed and explained through Pie Charts and Bar Graphs.

The outcome and suggestion of the present research work is available under the caption 'conclusion and suggestions'.

After analysing critically the case law related to reservation in detail, it is felt that no doubt the constitution of India expressly authorises reservations but the questions are who should be included among the backward classes and what should be the criteria for backwardness. As the constitution nowhere contains the definition of backwardness, the matter has been left to the state governments to spell out its in term. The pointer to this effect can be found in the constituent Assembly Debate which has set out that 'A backward

class is a class or community which is backward in the opinion of the Government. The judiciary has over the years made numerous attempts to evolve a secular, scientific and rational formula for adjudging backwardness, yet the judicial attempts in this direction have not resulted in concretising any well-defined principle that could find application in every case. The problem has not yet been solved from **Balaji V. State of Mysore, A.I.R. 1967 S.C. 49** till today as the criterion adopted by the state in most of the cases were found to be based on caste which is a prohibited criterion. The constitution also aims that such identification must not be based upon caste so that the vice of perpetuating caste may be abolished. That is why in Article 15(4) and 16(4) word class have been used instead of 'caste'. Caste system generates feeling of separatism - a sense of superiority on religious grounds. It widens the gap in human relations and crushes the idea of fraternity and social integration and hence caste criterion is not only constitutionally prohibited but sociologically undesirable. The 'poverty' criterion as was indicated by the Balaji Court was accepted in **Janaki Prasad V. State of J&K, A.I.R. 1973 S.C. 931**. On the reasoning that social backwardness was associated with economic backwardness but the court refrained from adopting this criterion as it would make a very large proportion of population as Backward. This criterion may pose problem when applied as the adoption of 'education' as the basis of classification would include a vast number of illiterates. Education as a basis to determine the socially backwardness could be suitable criteria as the evil of casteism could be eliminated and simple formula for the application of protective discrimination. Education would not only bring the downtrodden to the level of the society but enable every individual to rationalise other social and religious practices. The old rigid norms might be broken by the impact of education. The

Supreme Court in its ambiguous interpretative process (in Mandal Case) has further confused the concept of caste based backwardness and the backward classes. The Mandal judgement fractured the nation and disregards the basic structure of the Constitution. The decision had revitalized casteism, cleared the whole nation into forward and backward classes and opened up chances for conflicts.

It seems that no single test can be sufficient for delineating backwardness. Article 340 makes it clear that commissions can be appointed for investigating who are the backward classes.

The scrutiny of responses obtained from 300 respondents collected from the three districts of Uttar Pradesh (Aligarh, Agra and Rampur) has enabled us to come to the following findings. Firstly the execution of political safeguards in favour of Scheduled Castes had really made the positive impact on the political life of the Scheduled Castes and they have been able to share political power in the light of constitutional philosophy enshrined in Articles 330 and 332 of the Indian constitution. It is very unfortunate that despite of all this they have not been able to win any general seat in Lok Sabha and Rajya Sabha. Thus it has been stressed that the reservation of seats in legislative bodies must be continued forever. Secondly in spite of various adequate administrative measures and constitutional safeguards for Scheduled Castes they have been humiliated by Upper castes and police department on account of their untouchability. As a result Atrocities on the Scheduled Castes is on rise. Thirdly the Scheduled Castes are struggling hard to change their standard of living. Their standard of living is still very low because majority of the respondents have stated that have not been benefitted by the various schemes initiated by the government for their upliftment and no effort has been made by the government to remove their poverty.

Fourthly the government of Uttar Pradesh is trying its best to generate healthy educational environment in the state but still the majority feels that there is no facility of higher education for their childrens. The truth is that the literacy rate among the scheduled castes is still very low. Fifthly, that inspite of offering benefits in the form of relaxation of required experience, fee concession, pre examination coaching, separate interviews etc. in government and public sector undertakings the majority of respondents family members are not in government jobs. This is because the benefit of reservation in employment is being hijacked by the creamy leyers of Scheduled Castes. Sixthly, the Scheduled Caste respondents are actively conscious to vindicate their rights and reap the benefits available to them under various welfare legislations. Lastly the majority of the respondents asserted that there is no improvement in the condition of the Scheduled Castes by the governmental policies in contrast to the past and they are not ready to forego the policy of reservation and they strongly asserted that the reservation policy must be continued forever.

After analysing critically the case law and Empirical data it is therefore suggested that poverty, education, caste, occupation, geographical placements and other factors must all be considered to evolve a coherent and rational basis for backwardness. Further no caste should be allowed to have vested interest in being called as backward. There is urgent need to identify the beneficiaries of the reservation policy; otherwise the great edifice of our democracy might suffer a jolt and crumble to pieces under the sheer weight of its own contradictions. The benefits of reservation policy should not be given to the undeserving people. Even if a class or section of people is found to be backward today, the courts or legislatures should not act on the presumption that class would continue to

remain backward for all times to come. Social scientists and the lawyers would have to conduct empirical studies periodically to assess the attainments of the members of that class in different walks of life. If such studies reveal that backwardness of a class has ceased to exist, then that class should be removed from the orbit of backwardness. It must be remembered that a stage must reach when even without claiming protection of backwardness an individual may be able to get *non-discriminatory treatment and equality of justice*.

The present study reveals that the objectives of social justice through reservation could not be achieved after the lapse of four decades. The constitution makers visualised that social justice should be done to the scheduled castes by reservations for number of years. We have failed to uplift these backward classes due to the reason of electoral politics. The purely electoral motives of the government is proved by the fact that the reports which forms the basis of their decisions were lying among dead files and were resurrected only few weeks before either general elections, Assembly elections or major elections were announced. The apex court had clearly laid down in explicit term that in no case reservation for all categories should extend 50 percent so that half of the seats should be available to general candidates. But the study reveals that government has given scant regard to the courts' ruling. Thus reservation policy requires urgent restructuring. What is required to make the policy judicious and reasonable to spread the benefits of reservation to wider sections of the society. It is therefore suggested that only one generation should be permitted this reservation and its gains should not at all be covered by a few who are already better off. Beside this the benefit of reservation should be given only once i.e. at the stage of admission or recruitment or promotion and not at every stage of one's career. It should not be below merit standard. The constitution should

be amended that all extensions or prolongations of reservation should be done by the act of legislature and not by executive wing. If the act is based on any report it should be released to press at least three months before the bill is introduced in the legislature. Finally it is necessary to reform the society. This can only be done if the educated dalits should make it a habit to contribute atleast one percent of their earnings for their society.

Finally the study reveals that social justice is the sheet anchor of the constitution and the reservations were the means to achieve it. Reservations should not mar efficiency and it should not be given as charity. If such suggestions are achieved to some extent practically then this shall be the real tribute to the great social reformer and messiah of depressed classes Dr. Bhim Rao Ambedkar.



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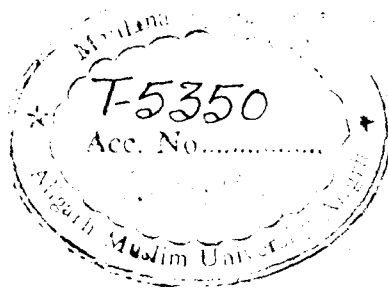
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2000



11 MAR 2002



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DEDICATED
TO MY DEAR
NANNA
&
ABBA

Prof. (Dr.) Zaiser Hayat



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Certificate

This is to certify that Mr. Shoeb Khan, Research Scholar, Department of Law, A.M.U., Aligarh has worked under my supervision for his Ph.D. thesis on "Reservation Policy : Social Justice - An Empirical Study of Scheduled Castes in Three Districts of Uttar Pradesh with Special Reference to Dr. B.R. Ambedkar". He has collected the original data for his thesis, which has been fully incorporated in his work.

I wish him all success in life.

(PROF. (Dr.) QAISER HAYAT)

PREFACE

Social justice is a quest for justice. It is a challenge of equality, liberty and fraternity. It requires abolition of all sorts of inequalities of wealth opportunity, race caste, religion and title. The concept of social justice is enshrined in the Constitution of India. The reservation policy has been accepted by the government of India after independence. The package of reservation aims at removing the socio-legal disabilities of certain specified groups called Scheduled Castes to facilitate their equal participation in the national mainstream and to protect them from injustice. Social justice is the sheet anchor and the reservations were the means to achieve it. According to Ambedkar reservation is one of the strategy for Dalit upliftment and social justice.

The completion of the work has been possible through the cooperation and help extended to me by my parents, teachers, brothers, sisters and friends.

I am highly obliged to Almighty God who always blessed me and made me capable of worth doing, guided me in the right direction and showered upon me indefinite blessings of strength, courage and confidence to bring out this uphill task.

It is my pleasant duty and sincere attempt to express my sense of gratitude and obligations to my 'BELOVED

PARENTS' inspite of the fact that no dictionary of the world contains the words, sufficient to do the same. Their countless blessings, deep love and affection always work as a hidden power behind every significant task I performed.

I would like to acknowledge the gratitude to my supervisor Prof. (Dr.) Qaiser Hayat, who despite his other pre-occupations and busy schedules, was kind enough to support me during the course of study. His encouragement, academic guidance and cooperation were the biggest assets on which I capitalised the present venture.

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My special thanks goes to my maternal uncles Mr. Siddiq Raza Khan (Advocate), Dr. Khaliq Raza Khan and Mr. Hamid Raza Khan and maternal aunties, Mrs. Azra Khan, Mrs. Nighat Khan and Mrs. Sabiha Khan who always inspired me in my academic career. I am also thankful to my aunty Mrs. Naseem Shujat for her constant inspiration through out my academic career.

The words are insufficient to express my feelings to my loving nephews, Danish, Tabish, Moonis, Umar, Sameera, Jamoor, Hashim, Saameen, Mohd. Ali, Zain and notorious Aheed and Ikku who have cooperated with me in their own way.

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Shoeb Khan
(Shoeb Khan)

CONTENTS

	<i>Page No.</i>
INTRODUCTORY	1-11
 <i>Chapter - I</i>	
A. Historical Background of Caste System	12-29
<i>i) Definitions of Caste</i>	
<i>ii) Evolution of Caste System</i>	
<i>iii) Origin of Caste System</i>	
<i>iv) Criticism</i>	
<i>v) The Battle Against Caste</i>	
<i>vi) The Caste System Today</i>	
B. Dr. B.R. Ambedkar and His Ideology on Hindu Caste System	30-38
 <i>Chapter - II</i>	
A. Social Justice (Explained)	39-51
<i>i) Social Justice (Post-Independence Overview)</i>	
<i>ii) Jurists and Judicial View, Various Terminologies Used</i>	
<i>iii) Concept of Social Justice</i>	
B. Constitutional Concept and Scope of Social Justice	52-65
<i>i) Constitutional Scope</i>	
<i>ii) Scope of Socio-Economic Justice</i>	
C. Social Framework of Social Justice and Egalitarian Ideology of Dr. B.R. Ambedkar	66-83
<i>i) Ambedkar's Search for Social Justice</i>	
<i>ii) Quest for Social Justice in British India</i>	
<i>iii) Quest for Social Justice in the Constituent Assembly</i>	
 <i>Chapter - III</i>	
A. Scheduled Castes (Explained)	84-103
<i>i) The Invention of Scheduled Castes</i>	
<i>ii) Designation of the Scheduled Castes</i>	
<i>iii) Constitutional Concept of Scheduled Castes</i>	

- B. Dr. B.R. Ambedkar's Contribution for the Upliftment and Representation of Scheduled Castes** 104-128
- i) *Status of Scheduled Castes*
 - ii) *Ambedkar's Thought on Backward Classes*
 - iii) *Ambedkar's Thought on the Representation of Scheduled Castes*
 - iv) *Dr. Ambedkar as an Emancipator of Scheduled Castes*

Chapter - IV

- A. Reservation Policy (Explained)** 129-144
- i) *Concept of Reservation in British India*
 - ii) *Reservation Policy and Scheduled Castes*
 - iii) *Reservation for Economic Upliftment*
 - iv) *Reservation for Special Educational Facilities*
 - v) *Job Reservation*
 - vi) *Social Opportunities (Abolition of Untouchability)*
- B. Dr. B.R. Ambedkar, Reservation Policy and His Species in the Constituent Assembly** 145-170
- i) *Dr. B.R. Ambedkar and Constituent Assembly Debates*

Chapter-V

- A. Equality Before Law** 171-195
- i) *Background of Right of Equality*
 - ii) *Concept of Equality*
 - iii) *Equality as an Aspect of Distributive Justice*
 - iv) *Principle of Equality under the Constitution*
 - v) *Reasonable Classification and not Class Distinction*
 - vi) *Judicial Interpretation of Equality Before Law*
- B. Constitutional Provisions Against Discrimination on Grounds of Religion, Race Caste, Sex or Place of Birth** 196-226
- i) *Judicial Interpretation of Article 15(4)*
 - ii) *Article 15(4) and Landmark Judicial Pronouncements*
 - iii) *Reservation for SC's, ST's and OBC in Superspeciality Courses*
- C. Equality of Opportunity in Matters of Public Employment** 227-289
- i) *Judicial Interpretation of Article 16(4)*

ii) <i>Position After Mandal Case</i>	
iii) <i>Expert Body Report on Creamy layer</i>	
iv) <i>Group B Class II (Direct Recruitment)</i>	
v) <i>National Commission for Backward Classes</i>	
D. Abolition of Untouchability	290-300
E. Protection of Rights of Cultural Minorities	301-326
i) <i>Who are the Minorities</i>	
ii) <i>Minority in the Indian Context</i>	
iii) <i>Criteria for Minority</i>	
iv) <i>Are Backward Classes (including SC's and ST's) minorities</i>	
v) <i>Protection of Minorities under the Constitution</i>	
vi) <i>Minority vis-a-vis Majority</i>	
F. Dr. Ambedkar on Equality Before Law and Equal Protection of Law	327-344
i) <i>Dr. Ambedkar and His Movement for Social Equality</i>	

Chapter - VI

A. Special Provisions Relating to Scheduled Castes and Scheduled Tribes in the Constitution	345-371
i) <i>Reservation of Seats for SC and ST in the House of the People</i>	
ii) <i>Reservation of Seats for SC and ST in the Legislative Assembly</i>	
iii) <i>Extention of the Term of Reservation</i>	
iv) <i>Claims of Scheduled Castes to Services and Posts</i>	
v) <i>Special Officers for SC's and ST's for the Enforcement of Safeguards</i>	
vi) <i>Appointment and Functions of Commissioner for SC's and ST's</i>	

Chapter - VII

A. Data Analysis	372-388
i) <i>Selection of the Respondents from the Three Districts of U.P. (Aligarh, Agra, Rampur)</i>	
ii) <i>Processing and Analysis of the Data</i>	
iii) <i>Responses to the Questionnaire</i>	
iv) <i>Summary of the Findings</i>	

B. Primary Census Abstract of Scheduled Castes and Scheduled Tribes Population in Three Districts of Uttar Pradesh	389-392
C. Comparative and Total Data Obtained from the Responses of the Respondents in Three Districts of Uttar Pradesh.	393-421
D. Bar Graphs and Pie Charts	422-445
CONCLUSION AND SUGGESTIONS	446-459
ANNEXURE-I : QUESTIONNAIRE FORM	460-468
BIBLIOGRAPHY	469-483
CASE LAW.	484-488

INTRODUCTORY

INTRODUCTORY

Roots of reservation policy for the Scheduled Castes in India lay deep in the past.¹ To be true, reservation policy as an accepted constitutional policy are the fruits borne by the tree of Hindu civilisation. The hierarchical social order was created over centuries with a view to preserve the monopoly of social status, property and education by the higher caste Hindus. As a result, property, education, freedom, justice, progress and prosperity was denied to the people of lower castes. Downtroddens in the Hindu society were stripped off the even equitable opportunities for political, social, economic and educational development. The caste system bestowed hierarchically graded privileges on some section of population and inflicted a series of disabilities to generation.³ Opportunities of growth and development were controlled and usurped by the higher castes with the result that the downtrodden were deprived and discriminated, symbolising a powerful institutionalised pattern of exploitation and suppression of the weak by the strong. In the Indian stratification of society, the Scheduled Castes constitute an important stratum, not because they form about 15 percent of India's population, but because they occupy a unique position as untouchables.

Thus the resurrection of the people who were known compendiously as the Scheduled Castes and treated hitherto as 'casteless', 'outcastes' and 'untouchables', oppressed by and subject to every manner of deprivation and discrimination for centuries after centuries, by a unique system of social and economic segregation, 'graded inequality', 'gradation and degradation' and 'gigantic cold blooded repression' and prevented even from protesting their plight.

All this compelled our wise founding fathers to adopt policy of compensatory discrimination as an equaliser to those who were too weak socially and economically in the caste ridden Indian society.⁴ They took special notice of the downtrodden and obligated the state to promote with special care the educational and economic interests of the weaker sections of the people, and in particular of the Scheduled Castes and Scheduled Tribes' and to protect them from social injustice and exploitation. The Constitution also provided, that the state should strive to promote the welfare of the people and in particular to minimise the inequalities in income, status, facilities and opportunities, amongst individuals and groups of people, residing in different areas or engaged in different vocations.

It is in this background the architects of our National Charter very rightly considered the reservation in various spheres of the life of the Scheduled Castes as one of the potential means of reducing inequalities.⁵ Special concessions have been made to these castes in term of reservation of seats in legislative, educational institutions and government services and in terms of pecuniary benefits. The main objective of these special concession is that this backward and suppressed segment of Indian population should be emancipated at the accelerated pace to catch them up with the overall pace of national development. It aims at accomplishing the object of historical restitution or reparation to effect the systematic and cumulative deprivations suffered by the lower castes in the past.⁵ Moreover reservation in favour of Scheduled Castes, is an exceptional and temporary measure designed to be used for the purpose of mitigating inequalities between communities.⁶ It is however the matter of great dissatisfaction that period of reservation has been repeatedly extended four times⁷ but still it is seen these classes of people are at the same position. This is because the social,

economic and political inequalities have not yet been removed and they need reservation for some time more with a view to enable them to come on par with the rest of the nation.

What is true is that today the lower layers of the people of Scheduled Castes are where they were two hundred years ago bearing a few who have monopolised⁸ all the benefits designed for these poor brethren. The general opinion is that the benefits of reservation policy by and large have been snatched away by the top creamy layer of the Scheduled Castes, thus keeping the weakest of the weak always weak and leaving the fortunate layers to consume the whole cake.⁹

A. OBJECT OF PRESENT STUDY

The Indian Constitution wishes to establish an egalitarian society. But one should not deny the harsh reality of Indian social life which is completely stratified. The caste ridden Indian society has resulted in the continuance of unequal social groups who have monopolised all the benefits and privileges for themselves i.e. the so called elite class or the higher in the class hierarchy. On the other hand there have been people who have been disprivileged and denied any benefit. This exploitation has divided India into two major nationalities i.e. the haves and have-nots. When we talk of affirmative actions or in simple term giving special treatment to some segments of the society in the form of reservation, it seems to develop antithesis of equality. But the provisions relating to the protective discrimination is in a nut-shell tries to bring unequals at the level of equals. There cannot be any equality between the people who have been historically unequal and who have been denied the access of education and job opportunities. Now to achieve the desired objective of bringing unequals at the level of equals, two

possible methods can be employed one is what may be called 'pull up method'. The other can be called 'push up method'. The strategy of pull up method results in the development and progress of only few within the disadvantage group while the push up method helps in raising the status of whole class of disadvantaged communities.

In the view of this background the present study is an attempt to see as to what extent the beneficiaries of the reservation policy have been benefitted in the light of the constitutional commitment. An endeavour will be made by this research work to assess the impact of various measures adopted for the welfare of the Scheduled Castes. An attempt is made to examine empirically the political, social, economic and educational impact in considerable detail. An earnest attempt is also made to find out the extent of progress which these people have been able to achieve by virtue of constitutional safeguards in due course of time. A special attention has been given to see how far the traditional caste system and practice of untouchability have undergone a qualitative change. All possible efforts have been made to cover the present study in the following major aspects.

- i) To probe the impact of reservation policy on political life of scheduled castes in view of the political safeguards embodied for them in Articles 330 and 332 of the Indian Constitution.
- (ii) To assess the impact of reservation policy on the social life of the scheduled castes specially with regard to untouchability, its magnitude, food, habits, atrocities, inter-caste marriage etc.
- (iii) To investigate the impact of reservation policy on economic life of the Scheduled Castes.
- (iv) Extremely conduct research to know the impact of reservation

policy on education of the people belonging to the Scheduled Castes.

- (v) To know in dept the level of awareness and opinion of the Scheduled Castes with regards to Constitutional safeguards designed for their welfare.
- (vi) To peruse and analyse whether the benefits of reservation have really been reaped by all the beneficiaries on equal footing or have gone only to a fraction of Scheduled Caste population i.e. the creamy layer.

B. RESEARCH HYPOTHESIS

For the purpose of conducting the present empirical study the following hypothesis have been raised -

- (i) The reservation policy has built up a sound political environment where in the Scheduled Castes people have enabled themselves to regain their confidence to share the political power on equal basis with other sections of society and village, state and national levels.
- (ii) The government has adequate and satisfactory administrative apparatus for the implementation of the constitutional safeguards to Scheduled Castes and has achieved a great deal of success in the removal of untouchability and invidious discrimination arising there from and creating thereby healthy environment of casteless society.
- (iii) The reservation policy has enabled the Scheduled Castes to change their traditional sources of livelihood with the result that their standard of living and the sunken status has improved appreciably.

- (iv) The reservation policy has generated an educational environment where in the Scheduled Castes people are able to equip themselves to compete with other sections of society on equal footing in various walks of their life.
- (v) The claims of Scheduled Castes in matter of public employment have been given due consideration while making appointments in service with the result that they are now adequately represented in the service sector in accordance with the spirit of Article 16(4) of our National charter.
- (vi) The benefits of reservation have reached in even form to all the Scheduled Castes in the light of constitutional philosophy and has, therefore, enabled them to reap the benefit of reservation policy on equitable basis.
- (vii) The beneficiaries have sufficient awareness about the constitutional provisions concerning reservation and are actively conscious to reap the said benefits available for them under different welfare schemes.
- (viii) The execution of constitutional safeguard in favour of Scheduled Castes has enabled them to come at par with the other sections of the society and hence time has come to discontinue with the reservation policy in the larger interest of the other sections of the society.

C. UNIVERSE OF PRESENT STUDY

The present study has been restricted to Aligarh, Agra and Rampur districts of Uttar Pradesh. The reason to confine the present study to these three districts is that these districts are densely populated with the Scheduled Castes and the field survey was very easily taken in these very districts. For this atleast five villages were

taken from each district to ascertain the upward mobility of the Scheduled Castes because of affirmative action. Similarly five localities were studied in urban areas of these districts. In addition to this data was collected from the different government offices of these three districts in order to find the representation of Scheduled Castes in the respective offices.

D. METHODOLOGY ADOPTED

In order to find the answers to the hypothesis emphasis on the collection of first hand information from the beneficiaries have been laid down. Multi prolonged approach has been used to collect as much relevant information as possible from the beneficiaries of the selected areas of these three districts. Two methods viz., questionnaire method and extensive interview method have been adopted for the collection of information from the beneficiaries of the reservation policy.

A carefully structured questionnaire was prepared and administered to the selected areas of these three districts. The sole purpose of collection of response was to elicit their views by posing questions in different easy forms so as to assess the real impact of reservation policy on the life of the people of Scheduled Castes under present study. Every effort has been made to make the study a good combination of questionnaire method and extensive interview method to evaluate and assess the impact of reservation policy in the light of the objective of the study and find answers to the hypothesis raised.

In the process of present study and research the Doctrinal Research methodology and empirical tools was also adopted relying on the material available in the library, the same cannot be completed because in order to evaluate the working of central legislation

applicable to Scheduled Castes and Scheduled Tribes the decisional work in three districts was relied on.

E. WORK PLAN

To facilitate the present study the whole work is divided in different chapters to achieve logical conclusion on the basis of systematic study.

Chapter-I deals with the historical background of Hindu caste system which is based on religious literature. This chapter examines how the rigid caste system is coming in the way of Indian Constitutional philosophy and progress of the country. Thus the indepth study is attempted for the analysis of Hindu caste system from its origin till date about its relevance and futility. In the second part of this chapter Dr. B.R. Ambedkar's ideology on Hindu caste system is discussed in detail. He argued for a cohesive society which would certainly eradicate the evils of caste system and bring the downtrodden classes into the mainstream of natural life in order to promote national unity and integration.

Chapter-II deals with the definitions, constitutional concept and scope of social justice. It is a quest for justice and a challenge of equality, liberty and fraternity. The concept of justice is a revolutionary concept which give significance to the democratic way of life and make the rule of law dynamic. It requires abolition of all sorts of inequalities of wealth, opportunity, race, caste, religion and title. The political freedom will have no meaning with out social and economic justice to the common people. The theme of directive principles of the state policy aims at bringing about a non-violent social revolution in order to fulfil the basic needs of common masses and to chaange the structure of the society. This chapter also deals with the social frame work of social justice and egalitarian ideology

of Dr. B.R. Ambedkar. He played a major role in quest for constitutional rights and social justice in the Constituent Assembly.

Chapter-III deals with the definition and the constitutional concept of Scheduled Caste. They were characterised by the convergence of multiple marginalities and cumulative inequalities. Their exploited conditions emanate from cumulative inequalities in economic, political and ritual systems. In this chapter Dr. Ambedkar's struggle for the upliftment of Scheduled castes is discussed. His attempt to maintain separate identity for the Scheduled Castes in order to safeguard their political interest has been discussed in detail in this chapter.

Chapter-IV deals with concept of Reservation. An attempt is made to highlight reservation as one of the mechanisms of protective discrimination in order to ensure the participation of traditionally neglected sections of the society. The chapter also includes the purpose of reservation as a tool for economic and social upliftment. The chapter also includes the fixation of quotas in legislative bodies, in educational Institutions and in Public employments. Second part of the chapter deals with the speeches Dr. B.R. Ambedkar in the Constituent Assembly Debates and how through his substantial, significant and spectacular contributions in the Constituent Assembly he was honoured as the Principal Architect of the Constitution.

Chapter-V of the instant work deals with the provisions for reservation in the Constitution of India. Land mark judicial pronouncements regarding the issues like who are the backward classes and what should be the criteria of backwardness, what is the limitation of reservation both numerical and time and can a balance be maintained among competing equalities are discussed in detail in this chapter. It is a known fact that, the Constitution of India does

not recognise caste as it does not prefer any body on the basis of caste and stands for egalitarianism and casteless society.

Chapter-VI deals with the special provisions relating to reservation of seats in different houses of parliament and as well as Legislature Articles provided for the appointment of the special officer for these depressed classes by the President and their functions are discussed in detail in this chapter.

Chapter-VII deals with the 'Data Analysis'. It includes the method of Selection of Respondents from the required three districts of Uttar Pradesh. Responses obtained through the questionnaire and the comparative analysis of data is done in this chapter and finally the summary of findings is also discussed and explained through Pie Charts and Bar Graphs in this chapter.

The outcome and suggestions of the present research work is available under the caption 'Conclusion and Suggestions'.

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CHAPTER I

CHAPTER-I

(A) HISTORICAL BACKGROUND OF CASTE SYSTEM

The word 'Caste' is commonly used to distinguish one person from another. It is generally considered as a hereditary group. The membership of caste is essentially determined by birth. A person remains the member of a particular caste in to which he or she is born. Hindu Society in India is divided into so many castes and sub-castes. A Hindu necessarily belongs to the caste of his or her parents. They inevitably remains in that particular caste to the last. His caste status cannot be alter by accumulation of wealth or by exercise of talent.

The word 'caste' came from the portuguese word 'casta' signifying breed race or kind; *homen de boa casta* is ' a man of good family.' The first use of this word in the restricted sense of what we now understand by caste seems to date from 1563 when Garcia de orta wrote that 'no one changes from his father's trade and all those of the same caste (casta) of Shoe makers are the same; Yule and Burnell, who quote this passage¹; follow it by another from a decree of the sacred council of Goa in 1567 describing Gentoos (Hindus) as dividing themselves into races or castes (castas) of greater or less dignity, holding the Christians of a lower degree, and keep them so superstitiously that no one can eat or drink who with those of a lower.

Caste is a rigid social system in which a social hierarchy is maintained by the heredity of defined status in the society, and allowing little mobility out of the position into which an individual is born. It is almost and always applied to the complex system which developed under Hinduism in India, although caste like system have evolved in other cultures and religious groups.

(i) **DEFINITIONS OF 'CASTE':**

LUNDBERG : "A caste is nearly a rigid social class into which members are born and from which they can withdraw or escape only with great difficulty"².

GREEN : "Caste is a system of stratification in which mobility, up and down the status ladder, atleast ideally may not occur."³

ANDERSON AND PANKER: "Caste is that extreme form of social class organisation in which the position of individuals in the status hierarchy determined by descent and birth."⁴

MAC IVER: "When status is wholly determined, so that man are born to their lot without any hope of changing it, then class takes the extreme form of caste."⁵

KETKAR : "A caste is a social group having two characteristics : (i) membership is confined to those who are born of members and includes all person so born; (ii) the members are forbidden by an inexorable social law to marry outside the group."⁶

(ii) **EVOLUTION OF THE CASTE SYSTEM :**

All societies throughout history have developed social hierarchies. These hierarchies have almost derived from occupations and their perceived relative status. As societies evolved from hunter-gatherer existence, through settled agrarian systems, development of trade, and industrialisation, new occupations were created and shifts in status occurred. The caste system represents in essence, a formalised, overtly codified social hierarchy, deriving from and subject to the changing economic and political requirements of evolving societies while typified by its rigidity in terms of the lack of mobility for the individual, over time, the caste system as a whole has shown shifts associated with fast the changes in society outlined

above. A unique feature of caste however, has been made its intimate association with religion.

The religious sanction and frame work given to the caste system in India have made it a particularly powerful social tool – a rebellion against caste becomes a rebellion against religion, with consequences in this and future lives – and has been a factor in its remarkable endurance to this day. The caste system appears to have evolved some time after the arrival into Northern India of the Indo-European tribes known as the Aryans, a nomadic people, around 1500 B.C., after the collapse of the Indus Valley Civilization. No written records exist of this period (the Aryans had no writing) but it would appear from the clues from later sources based on an ancient oral tradition that they encountered resistance from indigenous peoples, and were involved in a protracted period of warfare with local tribes before emerging victorious. Aryan society was already split into warriors, priests and the general populace, an unremarkable form of social organisation. On vanquishing the indigenous peoples, who are described as darker skinned and with different features from the Aryans (it is possible that this refers to the Australoid and Negroid characteristics still seen in certain peoples in India), anxiety to maintain the low status of the conquered and to retain racial purity are the most likely reasons for the addition of a fourth group of servants to the social system, made up of the non-Aryan peoples. The racial aspect of caste is clearly indicated in the term that emerged to describe the four groups – varna, the Sanskrit word for colour. The four varnas, in descending order of status, were then the Kshatriyas (the king and warriors), the Brahmins (priests), the

Vaishyas (who, with the rise of trade and agriculture, became the farmers and merchants) and the Shudras (servants).

Further changes were to occur before the system ossified most importantly the Brahmins, pointing out their importance in sanctioning the divinity of the monarch and vesting him with his regal authority, were able to manoeuvre to the top of the scale. As society developed (after the heights reached by Harappan Culture, the Aryan period initially represented a considerable step backwards), the area under settled agriculture expanded, and trade and the arts began to flourish, resulting in the slow rise of the Shudras in to the role of cultivators of the land and skilled artisans. Those who performed the most menial tasks, such as sweepers, and those who collected waste were left out of the caste system altogether, becoming outcastes or chandalas. A system of subcastes, or jatis, evolved, related to each occupation. It is at the level of jatis that the caste system has primarily operated, with individuals of a particular jati constrained in various social aspects especially marriage, to remain within their jati. As a social and economic conditions changed, the relative position of some jatis as a whole has shifted to reflect the changing status of the occupations concerned.

This detailed link with occupation is interesting. Occupation tended to be hereditary, the son learning from father. It was small step, then for caste, related to the status of the individual and their role in society, to become strictly hereditary, thus further assuring the supremacy of Brahmins. But it is this most insidious aspect of caste that was to trap millions of individuals effectively in an impoverished, uneducated, and stigmatized state for generation after generation.

The earliest exposition of this social and political phenomenon is found in the earliest of the sacred texts of Hinduism, the Rig Veda (dating back to about 300 B.C. but representing a far older tradition), which described the division of premeval Man, Purusha into four parts, the mouth becoming the Brahmins, the arms, the Kshatriyas, the legs, the Vaishyas, and the Feet, the Shudras. The roles of the four varnas were then established as a law of nature. But without offering some hope of salvation for all, no religion can succeed. This was provided, in Brahmin orthodoxy, by the ideas of Karma (roughly translatable as 'jati') and rebirth. While, in an individual's earthly life, his or her caste was decided by the caste of the parents, the fact of being born into a particular caste was no accident. It was dependent on one's deeds in past lives. The Bhagwat Gita stresses then idea of duty. The duty of an individual was dependent on caste. Thus a 'good' Shudra would improve his karma by a life time of devotion to his or her masters likewise, charity was a part of the duty of the higher castes. Through the carrying out of these caste defined duties, it was possible to be reborn into a higher caste. The ultimate purpose of all these was moksha, or release from the cycle of life and death, through acquiring a spiritual insight that relied, in traditional interpretations of Hinduism, on being born a Brahmin. Thus all could have hope, and the route to salvation was in doing the duty expected of one's caste.

It is important to stress here a key difference between the workings of caste and socio-economic class. A class system could be said to be, broadly speaking, related to material wealth. This was not so far the caste system. Brahmins, being spiritually superior, were expected to renounce such worldly pleasures. It was however, the

duty of other castes to provide the Brahmins with food and other material requirements. Nevertheless, with education confined chiefly to the higher castes, there has, in effect been a correlation between caste and class.

Much of the stigma against the lower castes and in particular, the out castes, or Chandalas, has been strengthened and justified through the religious concept of "ritual purity." Manual work was regarded as essentially unclean, and those associated with it could not be allowed to enter into intimate contact with the higher castes, and in particular with the Brahmins, who performed religious ceremonies before which they, too, had to purify themselves by bathing. This in addition to the taboo on inter caste marriage, the chandalas, in particular, were not to be allowed near the preparation of food for higher castes, or even into temples (especially in South India). Eventually their touch, and even their shadows were considered to be polluting, resulting in the chandalas becoming so-called untouchables and even unapproachables.

As the system evolved, new sub castes or jatis formed with new occupation, and incoming groups of people were given a suitable sub caste to fit them into the system, although this did not always prove straight forward.⁷

(iii) **ORIGIN OF CASTE SYSTEM :**

The origin of caste is one of the most important problem in the social history of India. It is so much complicated that it is difficult to recognize a particular factor responsible for its origin. It's complex nature as mentioned by Dr. Majumdar, "Is evident from the fact that after a century of pains taking and mericulous research in the history

and functions of the social system, we do not yet possess a valid explanation of the circumstances that might have contributed to the formation and development of this unique system.⁸ But in spite of this fact various scholars have tried to trace its origin. The following are some of the important theories about origin of caste.

(a) TRADITIONAL THEORY:

This theory is entirely based on the ancient literature of India. According to Rig Veda. There are four castes originated from supreme being. The Brahmins came from his mouth; Kshatriya from his arm; Vaishya from his thighs; and Shudras from his feet. As the mouth is the main organ of speech and learning therefore Brahmins are entrusted in work as teachers and instructors. The arms are the seat of strength therefore the functions of the Kshatriyas is to defend the empire. The thighs are the principal respository organs so Vaishyas are destined to provide food for others, similarly the Shudras originated from the feet, therefore their duty is to serve the other parts of the body.

This theory receives a classical interpretation in the account of Manu. His accounts rests on this assumption that the self existent created Brahman, Kshatriya, Vaishya and Shudra from his mouth arms, thighs and feet. He then divided his body and become half male and half female. The female part created Viraj. Further the ten Mahaparishad the seven Manus and the Gandharvarishis were created.

According to Manu, the four castes were castes from the four principal organs of self existent. Their duties are determined in according to the functions of the bodily organs. Therefore the Brahmins must study, teach, offer sacrifices, give and accept gifts.

The Kshatriya should , study offer sacrifices give gifts; the Vaishya should cultivate lands, conduct trade tend cattle and may adopt the profession of usury. The shudras should only serve the above mentioned castes.

Apart from the Vedic texts, various legends about caste are also available in the Puranas. According to Puranas, there are various classes and various duties are assigned to them. These classes are based on primitive differences of quality. A similar account is also available in the Ramayana which suggests that the caste arises according to the state of Dharma. Thus according to Mahabharata the world was created by Brahma. At first it was Brahmic. But later due to the men's action, it has become divided into classes. On the basis of actions of a son of Brahmin some time became Kshatriya, Vaishya or Shudra. Similarly a son of Brahmin sometimes becomes Brahmin or Kshatriya. Thus by birth neither any one was Brahmin nor Shudra. These very caste affiliation were derived on the basis of merits and actions.

(b) OCCUPATIONAL THEORY:

This theory is based on the assumption that there is occupational origin of caste.

It has been developed by Nesfield. He holds that difference of occupation alone is the basis upon which the whole caste system of India has been built. It is a natural social product with which religion has nothing to do. As there is a difference of occupation, therefore there is a difference of caste. It is well evident in practice that most caste bear the name which clearly indicate their occupations. Thus according to Nesfield 'Function and function alone is responsible for the origin of caste systems'. The supporters

of evolutionary theory have regarded the community of function as the main function in the evolution of caste.

(c) POLITICAL THEORY:

Apart from the supporters of traditional theory, there are some European scholars who are of the opinion that caste has been established by Brahmins in order to maintain their superiority in the society. The Brahmins have obscured the true fact by propagating the divine origin of caste system. In social gradation, Brahmins occupy a superior places and other castes are less favoured . Therefore it is well evident from this practical demarcation that caste system is the product of Brahmins who in every respect protected their class interests.

This very theory has been supported by the French Scholar Abbe Dubios, Ibetson and Dr. G.S. Ghurye. According to G.S. Ghurye, “ Caste in India is a Brahmanic Child of the Indo-Aryan culture, cradled in the land of the Ganga and Yamuna and thence transferred to other parts of the country.

(d) RACIAL THEORY:

The propounders of this theory contended that the division into castes is founded on an original diversity of races. The clear complexion and the regular features of Aryans distinguish themselves from non-Aryans. It is recognized that Aryans was conqueror. Therefore by the virtue of their victory Aryans placed themselves in the superior status while keeping the non-Aryans in a inferior condition. This very theory has been presented in a classical form by various eminent anthropologists.

(a) Theory of Risley - According to Sir Herbert Risley, Caste system originated after the emigration of Indo Aryans from Persia.

At Persia, their society was divided into four classes to which they implied in India after their settlement, the non Aryans to whom they defeated were different from them in respect of culture and racial features. These differences continued retaining the separateness of Indo-Aryans. Risley had also given a considerable importance to hypergamy and there developed a prohibition on Pratiloma marriage. Thus Risley contends that the caste system originated on account of racial differences and pratiloma marriage.

(c) Theory of Ghurye - According to Ghurye the important aspects of caste system specially Brahminical system, originated in the Gangetic plains mentioning the Indo-Aryan emigration, he contends that the original non-Aryan race of Indian was subdued by the Indo-Aryans conquerors. The conquered race was later regarded as Shudras. They were debarred from sharing the religious and social activities of Indo-Aryans. Thus according to Ghurye “the various factors that characterizes caste society were the result in the first instance of the attempts on the part of the up holders of the Brahmunic civilization to exclude the aboriginals and the Shudras from religious and social communion with themselves.”

(d) Theory of Majumdar : According to Dr. Majumdar caste system was originated from the varna (which means complexion and class). He contends that in the beginning there were three superior classes based on the ground of complexion. These classes or varnas were originated with the intermixture of Pre-Dravidian and Proto Mediterranean. The principal factors of racial mixture were as follows:

- (i) **Scarcity of women among invaders.**
- (ii) **Attraction towards the settled life of aboriginal people.**
- (iii) **Developed stage of Dravidian civilization.**

According to Dr. Majumdar the above factors played an important role not only in racial inter mixture but also in cultural conflicts of two divergent races. Thus according to Dr. Majumdar “The clash of culture and contact of races of crystallized social grouping in India and endogamous groups were formed who jealously guarded their racial purity and cultural integrity against wholesale admixture and miscegenation.”

Further the three classes graded the society by prescribing occupation. This was done to retain their superior status and debar the other people (inferiors ones). Thus a hierarchial organization developed and the caste system originated. In this hierarchial system the status of each caste was determined by the degree of purity of blood and the extent of isolation maintained by that caste.

(e) THEORY OF CULTURAL INTEGRATION :

According to Sarat Chandra Roy, caste system evolved due to the integration and assimilation of different cultures. He contends that there exists variations between various ethnic groups. According to Ray; all the cultures influence each other, by taking same thing new from the other and by leaving same thing old of his own. It resulted cultural assimilation and integration and paved the way for the origin of caste system. Thus in brief, the geographical proximity of these three races and their similarity of their social concepts caused such complex social organization which is known as Indian caste system.

(f) Evolutionary Theory :

This theory was firstly presented by Denzil Ibbetson who held that caste system originated due to interaction of three factors:

(1) Tribes (2) Occupational guild (3) Religion Further gradual assimilation of inter-tribal occupation gave rise to occupational stratification which was favoured by the religion. In due course of time different occupations became hereditary for different tribes and restrictions in social inter course between different tribes grew stronger. This phenomenon ultimately emerged into the form of caste system. Similar view have been expressed by same other writers who hold that caste system had its origin in the class and corporations. It derives its peculiar features from nobility ownership of land and occupations.

(g) THEORY OF MANA:

This theory has been propounded by Sri Hutton in his census report. There are several places in India where every member of a village practice a common occupation. This is the only base of social stratification. Such conditions also prevailed in India before Aryans. Thus according to Hutton caste elements existed in India before the Aryans immigration. Where Aryans settled down, they strengthened the pre existing division of society by fixing their own position at the top. Further Hutton mentions that caste restrictions developed on account of Mana which imposes restriction upon all members regarding food, drink and marriage. Thus according to Hutton, Indian caste system had its origin in the Pre-Aryan Social division and in the tribal attitude towards supernatural power.

(iv) CRITICISM:

The above theories are subjected to criticism because there is no unanimous agreement about the origin of caste system :

The traditional interpretation about the origin of caste has been criticized on the ground that firstly this theory depends on this subtle allegory in which the origin of caste is attributed to parts of divine person which is biologically wrong and unscientific . Secondly this theory supports the functional division of society rather than the division of society into castes . Thirdly according to K.M. Panmnikar the four fold division of Indian society is not only ideological but is not in any manner based on the fact of the social system. Fourthly, the various accounts of the early literature do not correspond from each other. Fifthly, we find that in ancient literature different accounts are given about the origin of caste system.

The occupational theory has been criticized on various grounds. According to Hutton it is wrong to assume that caste system originated due to the difference of occupation. The second weakness of this theory is that it entirely ignores the importance of religion in the formation of caste. Thirdly it can be said that occupation may be the basis of social classification yet it does not fully explain the origin of caste system at the same time, racial factor has been entirely neglected.

The political theory was criticized on the ground that there is a confusion whether caste is of Brahmanic origin when we consider the starting point we find that no one was Brahmin or Shudra from birth . Highest social dignities were attained according to merits, qualities and actions. It should also be noted that caste system to a product of gradual development of society and it is not based on

artificial foundation. Thirdly, we find many instances where men born in the lowest rank of society taking professions of the other caste.

The racial theory has been criticized on the following grounds. According to Hutton there is no consistency between the racial interpretation and the available facts . It does not explain causes of untouchability . Secondly Hutton points out that if racial contracts and cultural diversity is the sole cause of caste formation, then there must exist a caste system among Muslims and Christians who successively settled into India. Further it is mentioned by Hutton that hypergamy not only existed in India but also in some other countries. But there does not develop caste system. Fourthly, the racial theory assumes that Brahmanic influence played a vital role in the formation of castes. But this assumption is wrong because caste exists even in those area where there is no Brahmanic influence. Lastly according to Hutton, the greater weakness lies in the fact that it explains the origin of caste, purely on racial ground. It is therefore wrong to ignore other grounds.

The evolutionary theory is unable to explain ultimate cause of caste origin. Caste system evolved only in India while similar conditions were prevalent in the other parts of the world. According to Hutton, occupation is the factor in the evolution of caste but not the cause of its origin.

The theory of Mana has been criticized on various grounds Firstly according to Dr. Majumdar it is doubtful to assume that the principle of Mana played an important role in the origin of caste system. Secondly the concept of Mana is found in almost every tribe of the world but is never caused caste system anywhere else except

in India . Thirdly there is no indication that caste elements existed in India in Pre-Aryan period.

(v) THE BATTLE AGAINST CASTE:

Over the centuries, the caste system has experienced regular and strong attack from within and without, and continues to do so. Applied with varying levels of strictness at varying times, depending the perceived vulnerability of the Brahmins, it has proved remarkably re-silent. Hinduism is not a clearly defined religion with a founder and single sacred text. It evolved in the first instance, through the amalgamation of Aryan ideas with Dravidian concept, themselves linked to ancient Mesopotamia and other cultures. It has a number of sacred texts, ranging in content from the most profound philosophical thought to the most pragmatic detail of ritual and with many apparent internal contradictions. Over the centuries the influence of Buddhism, Christianity, and Islam (particularly Sufism) has also shaped thinking broadly termed Hindu. A rich, regional Hindu folk tradition has constantly questioned aspects of orthodoxy. Hinduism, then espouses variety of paths and approaches to the ultimate, which itself has been described as Brahman, the essence without any attributes, and in the more popular forms of the many gods of Hinduism, such as Shiva and Krishna. Clearly, in its most profound form, there is no place for caste.

Both Buddhism and Jainism represent major rebellions against the caste system, as part of Brahmin orthodoxy and oppression. The egalitarian nature of Sikhism, developed by Guru Nanak in 16th Century, was also a reaction against caste. But within the fabric of Hinduism itself, there have been many individuals and sects who have ignored or condemned cast. The mystics of Bhakti

movement, such as Chaitanya , were oblivious of such considerations, being concerned only in mystic union with God. They happily accepted untouchables, women, and those from other creeds as their disciples. The most important disciple of 15th century mystic, Ramananda , a key figure in establishing the worship of Rama as a deity , was Kabir, a Muslim, who became an important poet and mystic in his own right.

Over the centuries, many unknown or unremembered individuals, including many Brahmins, have also fought their won personal battle, often being made outcastes or even killed, in the process.

In the 19th century, Raja Ram Mohan Roy pioneered a rival of the Vedanta and in keeping with the spirit of the Upanishads, condemned the caste system. By the 20th century a number of prominent individuals spoke out against the institution. The battle against caste became part of a greater nationalist struggle, it was along with the Hindu-Muslim divide (partly perpetuated by the British), seen as a factor that divided Indians. Mahatma Gandhi appealed for the untouchables to be integrated with the rest of Hindu society. He renamed them ‘Harijans’ or People of God.” Dr. B.R. Ambedkar set up schools and colleges for untouchables, and fought for their political rights.

After independence, a policy of positive discrimination was established which guaranteed a large quota of places in colleges and professional institutions, and in the civil service, to untouchables, and other depressed classes, now collectively known as ‘Scheduled Castes’ . The new Indian constitution enshrined in brief in a secular and egalitarian system, without discrimination by caste or creed.

Political organisation along caste lines, and after shallow appeals by Parties in order to acquire the Harijan vote, have however, helped little and sometime positively hindered attempts to reduce the division of society. Many governmental and volunteer organization continued to fight against prejudice social customs and prejudices are hard to counter. Yet some considerable progress has been made.

(vi) THE CASTE SYSTEM TODAY :

Beyond many efforts, new factors attacking caste are now at plays and may prove unstoppable. These are related to India's emergence as a modern, industrial nation linked by satellite television and computer to the other nations and cultures of the world. The rise of the urban middle class, with free mixing of sexes, and associating material success rather than caste with social status, has led to the erosion of the caste system. Arranged marriages, a key vehicle for the propagation of caste, are declining in number although many are continuing with the purpose of propagating wealth and status. A significant number of young people in the cities are questioning the system and rebelling against it. Many problem still remains in the urban slums and in rural areas where the issue of caste further complicates the fight against poverty. The former Harijans or Dalits, as they are now called, continue to be those most needing access to primary health care, clean water and other basic resources. Of equal importance must be education, which alone can empower those who have been denied it for so long.

The impact of the caste system on the development of India over many centuries is incalculable. The country had produced many great scholars, scientists and mathematicians. Yet it is possible, for example, that the extreme separation of practical and mental work

effected by the caste system has been a factor in the paucity of technological innovation in India. The cost in social suffering has clearly been enormous. The greatest effect on country as a whole must be the denial of opportunity for learning and self-improvement to the great majority of the population, and with it the loss of many potential innovators, scholars, and statesmen and women. Caste, like sex discrimination, is an the decline in modern India. But its for reaching may take many years to eradicate.⁹

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CHAPTER – I(B)
DR. B.R. AMBEDKAR AND HIS IDEOLOGY
(ON HINDU CASTE SYSTEM)

Dr. B.R. Ambedkar was born in a poor Mahar family with caste stigma of untouchability. He realised that the real struggle for survival is faced by the people who are down caste and untouchable in India Driven ceaselessly by a zeal for reform, armed by nerve and talent, he made his own image in the hearts of the fallen untouchable lot of Indian humanity. Through out his life (1891-1956), he continued to remain the victim of untouchability , humiliation, hatred and disgrace of higher up Hindu Castes. As a result he was segregated in the class rooms, mentally tortured at public places, was discouraged in legal profession and was ruthlessly exploited in other spheres of his life . He was not allowed to enter temples and was even forbidden to learn Sanskrit, the so called language of the high caste learned Hindus.

These circumstances forced him to be a great rebel against the Hindu orthodoxy, pendency and its discriminatory treatment and to turn his mind to search for a cult where a man is not discriminated by another man. He was drawn to the equalitarian humanism of the great Gurus like Lord Buddha, Kabir and Mahatma Phoolley. On 13th December, 1935, he declared in public meeting at Yeola, District Nasik, that the untouchables must leave the Hindu fold and accept another religion instead . He took the lead an on 14th October, 1956, at a historic ceremony in Nagpur he embraced Buddhism for this he was later on hailed as Nav Buddha of the modern India.¹

During his life time he was considered to be an enigmatic and controversial personality. He was a great nationalist who was less

understood and most misunderstood by his own country man. But his worth was not hidden for a very long time, he began to be hailed by the people of India as a great patriot . He had a towering personality who lashed out against the Socio-economic inequalities prevailing in his time. His multi-dimensional personality had shown great insight and wisdom in various spheres of individual and social life.

In regard to caste system in India, Dr. B.R. Ambedkar pointed out that the people of India form a homogenous whole. The various races occupying definite territories have more or less fused into one another and possess cultural unity which is the only criterion of homogenous population. Given this homogeneity as a basis, caste became a problem altogether new in character and wholly absent in the situation constituted by the mere propinquity of endogamous social or tribal groups. Castes in India means an artificial chopping off of the population into fixed and definite units, each one prevented from using into another through the custom of endogamy. Dr B.R. Ambedkar emphasized endogamy which is peculiar to caste. He also mentioned the custom of exogamy at clan or gotra level. The various gotras of Indian are and have been exogamous. He stated that with exogamy as the rule there could be no caste, for exogamy means fusion. But we have castes, consequently in the final analysis creation of castes, so far as India is concerned, the super-imposition of endogamy on exogamy means the creation of caste. Such an analytical definition was given by Dr. Ambedkar he has given anthropological illustrations for his definition of caste.²

Dr. B.R. Ambedkar mentioned that the problem of caste ultimately revolves itself into one of the repairing the disparity between the marriageable units of the two sexes with in it . Both the surplus man and the surplus woman constitute a menace to the caste and if it is not taken much

care in finding suitable partners inside their prescribed circle, very likely they will transgress the boundary, marry outside and import offspring that is foreign to the caste. He also discussed the problem of widow remarriage and enforced widowhood, which he considered the reason for surplus woman. Dr. Ambedkar also suggested that the problem of surplus man (widower) is much more important and much more difficult than that of the surplus woman in a group that desires to wake itself into a caste. He pointed out that no scientific reasons, prevails for the custom of sati, enforced widowhood and girls marriage. We have plenty of philosophy to tell us why these customs were honoured, but nothing to tell us the causes of their origin and existence. He said that ‘ a caste is an enclosed class’.³

Dr. B.R. Ambedkar criticized Manu and said that Manu did not give the law of caste and could not ordain the present order of Hindu Society. His work ended with the codification of the Hindu caste system rules and the preaching of caste Dharma . The growth and spread of the caste system is too gigantic a task to be achieved by the power or cunning of an individual or of a class. Similar in argument is the theory that the Brahmins created the caste. Dr. Ambedkar pointed out that there is a strong belief in the mind of orthodox Hindus that the Hindu Society was somehow moulded into the frame work of the caste system and that it is an organization created by the Shastras. He explained that the whole process of caste formation in India is a process of imitation of the higher by the lower. His study of the caste problem mainly reveals four main points : 1) that inspite of the composite make-up of the Hindu population there is a deep cultural unity. 2) the caste is a paceling in to bits of larger cultural unit, 3) that there is once caste to start with and 4) that classes have become caste through imitation and ex-communication.

In regard to caste, Dr. B.R. Ambedkar has also given certain explanations for its origin. He states that Indian History is a tally of events of caste discrimination, preached and practised in the name of God. It is due to the role of religion in the early laws that the priest became the most potent instrument of the stability and status quo. He interpreted the concept of struggle for existence like as, “ desires whenever acute because of the limited goods of existence, out of which they can be satisfied, disturbs this balance.” In order to maintain the balance men have relied upon religion and upon reasons. For the Indian historical content Dr. Ambedkar shows how the monopoly of social control made the priest the most powerful factor in social control.

A great deal of controversy exists on the caste origin in India various theories have been proposed by the different Indian and Western Scholars. In our society the most popular theories are Varna theory, Varna hypergamy and hypogamy (anuloma and pratiloma), occupational theory, racial theory, ecological and geographical factors and the political condition of the ancient India. In regard to the problem of caste in India. Dr. B.R. Ambedkar had clearly pointed out that caste is a barrier to social progress and individual advancement of freedom. He also informed that the control minds of men by some powerful individuals is bad such that it retards any moment. The peculiar feature of the Indian caste system is the social equality which is seen in caste hierarchy. The caste hierarchy represents the social position of each and every caste, the Brahmins stands on the top and the Harijans lies at the bottom. Not only the social inequality but also economic and political inequality is found in between highest and the lowest jatis. At present, the power struggle in between the highest and the lowest castes are very common, which led to many caste conflicts. The so called dominant or highest caste are not allowing the lowest caste to reach

up to their levels. Especially in the rural villages the caste is so rigid as compared to that of urban areas. In the rural villages the lower castes are still economically depending on the dominant peasant castes. The position of the downtrodden communities in the rural villages seems to be very low and they lag behind in many spheres. Dr. Ambedkar has rightly pointed out this problem in the year 1916 and has done much scholarly work on it. So far no solution has come out for the resolution of the problem. Therefore serious and indepth research studies are required to find the solution to this problem. It is the responsibility of the educators, scholars and thinkers to focus their attention on this problem taking the radical thinking of Dr. B.R. Ambedkar as a beacon of light.⁴

Dr. B.R. Ambedkar has critically examined the problem of caste in our society. He pointed out that as long as Hindu caste system in India exists, the Hindus will hardly have any social intercourse with outsiders and if Hindus migrate to other regions on Earth, Indian caste would become a world problem. "According to Dr. Ambedkar the Aryan Samajists have done a great mischief in making the Hindu society by preaching that Vedas were eternal, without beginning, without end and infallible."⁵ Dr. Ambedkar said that Purushasukta would really have been unique if it had preached a casteless society. The attempt of Purushasukta to realize the ideal was a kind of political jugglery, the like of which was not found in any other book of religion.

The practice of untouchability is peculiar to Hindu system. Dr. B.R. Ambedkar said that the Hindu civilization could be a process of caste formation in India. It is a process of imitation of the higher by the lower. Dr. B.R. Ambedkar pointed out that caste is a barrier to social progress and individual advancement of freedom and it retards any progressive moment.

According to Dr. B.R. Ambedkar Varna and the caste were the evil ideas. Varna was infallible like Vedas. The Bhagwat Gita has done enough mischief by giving a fresh lease of life to the Varna system by basing it upon a new and plausible foundation namely that of innate qualities. Moreover the Varna system of Bhagwat Gita did not say that it was based on birth.

According to Dr. B.R. Ambedkar Hindu Society is pregnant with the evils of caste system which effects the social growth of our country. He refused to call the Hindu society a society at all since it does not have the essentials of a society. Caste system destroys the essentials of a society Dr. Ambedkar played an important role in binding the people together and he contemplated the ideal society based on liberty, equality, fraternity and social justice. In Dr. Ambedkar's view, Hindu society lacks communications of ideas, emotions and efforts. He attached great importance to communications.⁶ Dr. Ambedkar's thoughts on national unity and integration were influenced by the oppression and suppression of untouchables in Indian society. Dr. Ambedkar pointed out that caste has killed public spirit and has destroyed the sense of public charity. A Hindu's public is his caste and his responsibility is only to his caste. Dr. Ambedkar has firm faith in a cohesive society which would eradicate the evils of caste system and bring the depressed classes into the main stream of national life in promoting national unity and integration. Caste and religion are strong binding factors in Indian society and intimately effect the people's conduct.

Dr. Ambedkar in his draft of the Fundamental Rights had suggested that 'Any privilege or disability arising out of rank, birth, person, family, religion or religious usage and custom is abolished.' Neither the Drafting Committee nor the Constituent Assembly accepted Dr. Ambedkar's Draft. Dr. Ambedkar's draft was more substantial and pervasive and was more

near to the concept of social equality and social justice without mentioning the words 'Chaturvarna' or jati (caste). He attempted to abolish all privileges and disabilities arising out of the Varna or Caste distinctions. The characteristics of caste in relation to a person or family are rank hierarchy which is created by birth. It is sanctioned by religion. The caste hierarchy, through religious usages and customs creates privileges for higher caste and disabilities for the lower castes. Dr. Ambedkar had said that if the Hindu religion is to be their religion, then it must become a religion of social equality..... Merely an amendment of the Hindu religions code is not enough. What is required is to purge it of the doctrine of Chaturvarna which is the parent of the caste system and untouchability. Untouchability is the most decadent form of social inequality, but the root cause or arch villain is the caste system, based on hierarchy by birth. In perspective planning, the abolition of caste system should have been a definite social goal. We are unable to solve the caste problem justly because the caste hierarchy is so much in our blood that we failed to perceive it as an evil, secondly the abolition of untouchability was the only political strategy and thirdly preservation of caste system is a vested interest for securing, social, economic and political foot hold. The caste system has perverted the democratic and socialist apparatus and is seriously threatening to dominate both.

The Hindu caste system has its religious origin. It gave birth to upper caste and lower caste considerations. This effected the cohesiveness of Hindu society. The rigid caste system is responsible for the creation of the so called untouchables, scheduled castes, scheduled tribes and other weaker sections of society which form the lowest strata of Hindu society. The Brahmins were treated to be the symbol of religious superiority and intellectualism. Dr. Ambedkar came forward with an aim to create a society

where caste consideration must have forgotten. According to him caste is a barrier to social progress and other individual advancement of the freedom. He strongly criticized Varna and caste system as evil ideas. According to him there should be a cohesive society which would certainly eradicate the evils of the rigid caste system and bring downtrodden classes into the mainstream of natural life and then it will promote national unity and integration. He also argued for a casteless society. According to him abolition of caste system would certainly create a congenial atmosphere which is infact essential for a cohesive society that promotes national integration. Dr. Ambedkar preached annihilation of caste for the re-organisation of Hindu society.

Dr. Ambedkar was a man primarily responsible for bringing about social revolution to secure human dignity for the oppressed. Indians who wretched life as untouchable was a blot on humanity. Thus untouchability and discrimination are yet to be fully wiped out despite numerous concrete steps taken by the govt. of India when India became independent and adopted constitution that brought many safe guards in favour of weaker sections specially the Scheduled Caste and Scheduled Tribes, also banned untouchability and bring the downtrodden at par with other sections of the society. Of course, the constitution of India was hailed all over the world as a 'New Charter of Human Rights'.

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CHAPTER II

CHAPTER II (A)

(SOCIAL JUSTICE (EXPLAINED))

(i) SOCIAL JUSTICE (POST-INDEPENDENCE OVERVIEW)

Conception of justice and equality are undoubtedly normative and involve common acceptance of moral values. Every society has looked upon both of them as cardinal virtues which all citizens must follow. For this reason each society embodies in its social structure in various shapes and forms. No society has succeeded in fully practicing both or either. The notions of justice are exceedingly hard to define. A just society must start with the axiom that human beings are unequal in their endowments and that no matter whatever is done with nature, nature imposes disparities. Given equal opportunities, or, rather equi-proportional opportunities, these disparities can be toned down. A just society is one in which competing claims of unequal persons are sought to be reconciled by variety of means such that the social dividend is fairly distributed. Effective means for achieving distributive justice is the hall mark of a just society. In order to safeguard distributive justice, exploitation has to be minimized in all forms.

In a developing, much more a developed free market economy, the ends of distributive justice are subverted by the fact that corporate power is unequally distributed. In any theory of just and equitable society causal nexus must never be overlooked. A further threat to a just society emerges from a different source. Between nations and also within nations, there are not only classes but ethnic groups with the development of capitalist enterprise the interest of ethnic groups tend to clash such that the weaker and less organized group is subjected to various forms of exploitation. Distributive justice is closely linked with the problem of balancing the interest of the present against the future. Intergeneration balance has gained

in importance with the increase in the life span of population and the break up of joint family.

India has tried to achieve in building up a just and equitable society in the post independence period. In the preamble to the constitution of India (1950) it was solemnly resolved to 'secure to the citizens social economical and political justice and equality of status and opportunity.' The Directive principle of state policy (Section 39) enunciated that

"the state shall in particular, direct its policy towards securing (a) that the citizens, men and women equally have the right to an adequate means of livelihood (b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good; (e) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment."

As far as social aspects of justice and equality in India after independence is considered, the term social is wide enough to include almost any thing related to human relations. It is therefore, necessary to delimit its domain. When we propose structural aspects which includes family, caste and kin group and ethnic groups. Naturally the status of women and children are subsumed.

The pre-dominant trend in this period is the emergence of a middle class in the rural and urban areas mainly depending upon earning their living from a burgeoning public and private sectors. The middle class ethos has spread to the villages with the spread of Kulak farmers. This has led to consumerist society with all attending virtues and vices. The growth of consumerism is perhaps the most potent cause of growing sense of

inequality and deepening feeling of injustice among the low income groups. In conjunction with this consumerist culture, a growth of casteism in post independence India was witnessed. This was basically hierarchic and equitable. The casteist grip has strengthened in politics, in business and in agriculture. As a result, Indian social structure became more divisive. No doubt the avowed policy of government has always been to disavow caste yet elections are won on the strength of caste alliances and in some states the party lines are clearly aligned along caste lines. Unfortunately, no trends are visible which would persuade one to believe that the caste virus is weakening and in virulence and in spread out. Thus as a result the social and economic disparities between Scheduled and non-Scheduled castes, and tribal and non tribals have widened.

India was among few developing countries where women could participate with men on no less uneven terms in social and economic spheres. For an educated woman, specially from elitist classes there were plenty of opportunities and these opportunities were confined to those who come from upper classes and can go to reputed school and colleges. But for the unprivileged the social ladder is extremely short, narrow and partly broken. In addition to the economic, the social exploitation of women from low income groups worsened over years. India also employs the largest number of children especially in the informal sectors. They happen to be the most vulnerable to oppression with the growth of poverty, the economic value of children's labour has risen and lower income groups prefer to have large families since they can add to the household incomes from the age of 4-5 years or even less. The incidence of injustice and inequality is greatest for children for they are defenceless against their own parents, guardians and much more against employers.

The founding fathers of our constitution wanted India to be a political but a social democracy also in any theory of justice and equality the distribution of civic obligation have to be carefully balanced against human rights qua 'human rights'. Any society which modifies these rights and duties on the basis of religion, race sex or other non secular divisions ceases to be a free and just society. Since Indian polity claimed to be secular, it has allowed religion and language to be the permissive basis of political parties. It did not strive for a common civic code for all citizens. It compromised with anti-secular forces which used religion as a bargaining counter for going sectarian ends, not for all citizen but for only few. Similar compromises were made on the basis of language. Beside this our policy also shows another structural weakness. An open society is one where as adequate social system is built up where by the genuine needs of the common people are constantly put under surveillance by a band of workers in the field. They send timely signals to the administrators; the legislators and the press. This class responds quickly and efficiently to the felt needs.

The over all picture shows that the Indian polity is full of light and shade. The judiciary and the press do not get high marks for upholding the cause of justice and equality. Yet the state, is not firm in challenging and overcoming the communal threat. The secularist ideal is receding into distance because of the compromises made with the communal forces by our political parties. The multi ethnic society must play according to the rules of the game which a state cherishes. The clouds that are gathering on the horizon can only be dispelled if only no 'suitable' changes are made in these rules.

Let us now proceed how far the administrative structure in this country subserves, how far it subverts, the ends of social justice or inequality. It is seen that the administrators in India has lost the confidence

not only the administered by of his own. In the district it is distrusted beyond measure. The general feeling is that he is amenable to the political pressure from the legislators. His integrity is no longer above suspicion. The number and range of administrators have expanded beyond measure both at the centre as well as in the states. Despite of the extension of executive staff the decisions are never fair and quick. Few executive can be relied upon to stand for the economically deprived and politically weaker sections. Indeed there is receding in the justice and fair play. Almost every where the common man is suspicious that a public official, whether high or low can be influenced out by the rule of law. If there is adequate pulls and pressure, all the administrators bends before the strong and mighty. As a result in some states law and order became more and more inefficient. The police have lost respectability . Policeman in all states is an instrument for oppressing the weak, the poor, or the deprived.

This depressing trend cannot be explained in words. Administration in any society largely depends upon the values actually pursued by its ruling class and the ethos they build up. The rule of the game are framed and followed at this class chooses. In the last decades the principal rule has been to capture political and economic power. The politics of expediency also effected the ethos of the administrator which resulted in the suffering of his credibility.

(ii) JURISTS AND JUDICIAL VIEW, VARIOUS TERMINOLOGIES USED:

Justice is a vast subject with many topics and sub-topics. It is very difficult to define it some thinkers are of the view that its meaning is to raise “an unimportant verbal question to which no definite answer can be given” For example, Stevenson warns us against trying to find any definite

meaning of the term justice². Beside this many other thinkers are having more positive attitude about justice. Walter Kautmann has traced the origin, like Kant's categorical Imperative, to a kind of inherent moral sense in man³.

In spite of innumerable theories, a few scholarly studies concern themselves what really justice is. The term justice is used in descriptive form or in operation of the legal system. Justice is derived from the root 'jus' which means law. So literally speaking 'just' would mean a state of affairs which is in accordance with the law. If it is in accordance with the natural laws it would be natural justice and if in accordance with social and political laws, it would be social and political justice. In the beginning of recorded moral and legal thought the term justice was used as equivalent to righteousness in general. Justice was considered as complete in conformed with the approved pattern of moral conduct. One of the most famous definitions of the justice is given by the Roman lawyers enshrined in a code "Justice is the constant and perpetual will of rendering to each his right"⁴. Even older than this, Cicero defined it as rendering to each his own. But the earliest and the fully developed account of justice can be attributed to the Greek philosopher Plato. According to him, justice involves giving each person his due.⁵ Plato's main problem was to determine a person's due. He has tried to solve the problem by providing a functional analysis, which was basically shared by Aristotle as well. Justice is to be analyzed in terms of functions. To assert of something that it is performing its function is the same as saying that it is performing justly. Individually Plato thought that human beings have souls which are composed of appetite, will and reason. A just person would be one who has a harmonious soul. This harmony occurs when each part of the soul performs its appropriate functions. And according to Plato the individual soul is a microcosm of the state. A just

state is a harmonious state where each class perform its appropriate function. For Plato justice occurs when every thing is in proper place. In Platonic view, it is unjust and corrupt to place people in jobs they cannot handle well. But the toughest job in this case would be to determine each person's due. Broadly speaking justice has been taken in the sense of a principle of righteousness, a principle of unity or harmony or a principle which brings about an order in the nature of thing. Corresponding to the term 'justice' we have the term 'Dharma' in Indian philosophy which stands for righteousness. The word Dharma is derived from the Sanskrit root 'Dhr' which literally means 'what supports' or 'upholds'. It is supposed to be that principle which sustains the social order, protects people and bring about social cohesion justice works at three levels namely, at natural level, at social level and at individual level. At natural level justice means cosmic or universal justice which is exhibited in the orderly principle of cosmic harmony. Its counterpart in Indian philosophy can be found in the term "Rta" which was prevalent in the vedic times and it literally means course of things. As a cosmic law 'rta' is the ground of determination of various phenomenon of nature. It reigns supreme every where in the sky, in the sun, in the mountain and on Earth. 'Rta' was considered to be completely autonomous in its functioning. Not even gods could transgress its authority. It stands for law in general and immanent justice. This very concept of 'Rta' is reflected in the doctrine of 'Karma' in the moral sphere which states that in according to good or bad actions man with have good or bath births.⁶ This doctrine of Karma holds every individual responsible for his actions. This doctrine can be called an example of providential justice.

(iii) CONCEPT OF SOCIAL JUSTICE:

The concept of social justice is one of the perennial question of legal and social philosophy. It has produced many normative and stipulative replies.

The question arises whether justice is a social concept or whether it is something which a man has towards himself? According to Socrates justice primarily is a quality of the soul which has its various parts well operated with respect to one another. Similarly according to Plato, justice is a complete expression of the soul's excellence. It is very epitome, the totality of virtue⁷. But according to Nichomache Ethics, justice is placed in front of all moral goodness because it is exercised not for ones, own but in relation to our neighbour⁸. No, doubt justice as righteousness can also operate at individual level as virtue, it is conceived primarily as a concept that applies to man in his social relations. Justice only occurs where many man are gathered together in a social relationship. According to Hobbes "it is a quality relating to men in society, not in solitude."⁹ Kelson calls its primarily ' a quality of the social order' ¹⁰. R.W. Bardwin goes to the extent of saying that justice being essentially a quality of the behaviour of one man to another that is of men in society, all justice is a social justice."¹¹

The second question that arises is whether social justice refer to an actual state of affair in society or is it a social norm ? The answer is that, most of the theories agree that justice is a social norm which supplies a guide or a directive by which men can regulate their actions towards their fellowmen. The 'just' thing is what are ought to do and the unjust thing what ought to be avoided. Justice is thus frequently spoken of as a norm, a standard, a criterion or a measure by which men may judge or evaluate human actions . The normative character of justice puts us on trial of another question; whether justice is essentially a moral concept, where

justice stands for the objective human necessity of changing the unjust situation by resolving the contradiction between how men lives and how he ought to live. The necessity of Ethics is the necessary for codes and rules of conduct by which human relations can be regulated in society, so justice is a concept which is used for evaluating men and their actions in social context. To say X is just is to evaluate X as good; and as to say X is unjust is to evaluate X is bad. In this sense justice can be called an approbative concept as well. According to R.M. Hare 'justice is a word of commanding like good' and is used to guide choices ¹². Similarly Sidgwick declares it a 'Quality which it is ultimately desirable to desire to realize in conduct and the social relations of men' ¹³. Again since justice is an evaluative concept, it is obligatory because it imposes an obligation or duty on the members of society.

The third question which arises is that whether one of the most fundamental questions regarding justice is its relationship with legality or laws. A common impression is that justice is a matter of law and legal procedure, that then is no justice without law. The main problem is whether justice depends upon law or an invention of law or whether justice is itself a criterion of law? Or in other words: whether law determine justice or whether justice precedes law and laws are formulated just to protect or maintain justice Hobbes, Kelsin, Austin etc. make law as the standard of justice, according to them justice arise only in connection with law, and that law itself is independent of justice. In fact their aim is to eliminate dualism between law and justice. The 'Just' is same thing more than legal. When consideration is taken an action which is legal without being 'Just' . It is normal for people to disapprove of those who take advantage of the law to their own profit and to the discomfort of others. The term 'legal' cannot replace the word just.

The fourth question which arises is that, since justice is of normative character, it is relative to a particular society. Man's understanding of justice of what is just or unjust, changes and develops through the course of time and differs in different cultures and civilizations. The enslavement of men and subjection of women were once thought to be in no way unjust. But these very things are no longer approved hence they are not considered to be just. Due to the development of human knowledge and progress in culture, the scope of justice has been immensely enlarged.

Lastly, the most fundamental aspect of justice is its relationship with equality. The question which arises is that what is equality? One point of view is that equality lies in treating equal as equals. Justice then is treating equals equally and un-equals, unequally. But difficulty lies in giving content to this formula. Egalitarian position is that all people are treated as alike and therefore just society is strictly the egalitarian society in which everyone is treated alike. But the main difficulty is that that people are not sufficiently alike to be always treated alike. Psycho-Physically they are different. Their needs, abilities, contributions and interests are not alike. So from physical point of view individual differences are those real facts which cannot be ignored in the social justice. And to treat the individuals as if they were identical would be to commit great injustice. It is not that extreme equality is impractical. It is that extreme equality is unjust. Thus the main problem of the justice is to bring about a strict correspondence between natural equality and social inequality. This point is made very clear in Rousseau's celebrated discourse on equality¹³. Durkheim's idea of just society is simply that is one in which social inequalities exactly express natural inequalities. Natural inequalities means inequality in ability, merit or talent¹⁴.

The problem of natural inequality is best depicted in the Hindu order of Varnas or castes. This system divided the whole society into four varnas i.e. Brahmin, Kshatriya, Vaishya and Shudras. These varnas correspond to the natural order of things i.e. they believed that each individual was endowed with some Gunas or qualities or some combination of them. And in a just society there is a correspondence between a person's quality and his social position or varna. Each varna has its own set of Dharmas. Justice lies in the proper functioning of these varnas. Dharma at social level is that correspondence between a person's quality and his social position is distributed¹⁵. Even Mahatma Gandhi believed that the division of people into four varnas 'is not a human invention but an immutable law of nature'¹⁶. Though basically varna scheme was based upon natural qualities of a person, but later on it enjoined upon the individual to follow the traditional callings of their forefathers. Mahatma Gandhi recognizes the connection between varna and birth but did not condemn it because according to him all varnas are equal and the feeling of inferiority and superiority were perversions of varna Dharma and inconsistent with its basic spirit.

The idea of equality and inequality seems to have special place in the modern society. On one hand, there is a strong attachment to equality, as in the principle of equal opportunity and on the other hand, there is a striking pre-occupation with sorting out and ranking them according to their natural abilities, aptitudes and qualities¹⁷.

Conclusively speaking the search for justice is the search for that social order where conflict interests shall be replaced by harmonious human relations. The harmonious relations are only possible when every human body is placed in society according to his own aptitude. The concept of harmony, balance, equilibrium or reconciliation of interests has been the dominant theme in treatment of justice from Plato to Roscoe Pound. In a

modern democracy, it is the function of justice to blend the different tones of society into a satisfying wholeness.

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CHAPTER II (B)

CONSTITUTIONAL CONCEPT AND SCOPE OF SOCIAL JUSTICE

(i) CONSTITUTIONAL CONCEPT:

The political freedom will have no meaning without social and Economic justice to the common people. This is the theme of Directive Principles of state policy. These principles aims at bringing about a non-violent social revolution. It is through such a revolution that the constitution seeks to fulfil the basic needs of the common masses and to change the structure of our society. The constitution visualizes that the society as a whole and every member of the society should participate.

According to Austin “The core of the commitment to the social revolution lies in the fundamental rights and in the Directive Principles of state policy. There are the conscience of the constitution¹. According to Austin Fundamental Rights and Directive Principles are like two wheels of a chariot, one no less important than the other. They are just like twin formula for achieving the social revolution. Austin has rightly said that the Directive Principles were incorporated in the constitution of India with the hale and bloom that same day, the tree of true liberty would bloom in India². The Fundamental Rights and Directive Principles thus “connect India’s future, present and past adding greatly to the significance of their inclusion in the constitution and giving strength to the pursuit of social revolution in India. They aim at making the Indian masses free from the positively endangered by the countries of coercion by the society and the physical condition that had prevented them from fulfilling their best selves.”³.

Dr. B.R. Ambedkar proposed Directive Principles in the constitution and he emphasized its meaning and implication in the following words “we do not want merely to lay down a mechanism to enable people to come and capture power. The constitution also wishes to lay down an ideal before

those who could be forming the Government. That ideal (1) is economic democracy..... In my judgement the Directive Principles have great value For, they lay down that our ideal is economic democracy. Because we didn't want merely a parliamentary form of Government to be instituted through the mechanism provided in the constitution, without any direction as to what our economic ideal or as to what our social order ought to be, we deliberately included the Directive Principles in our constitution.”⁴.

According to Hayak the term ‘social justice’ is intellectually disreputable the marks of cheap Journalism⁵. According to Hord Devlin ‘Social justice is above law ; it is a body of principles with which the law should confirm. Social justice guides the law maker;’ The law guides the judge⁶. The phrase ‘social justice’ has been used in the constitution after due deliberation. We have to understand its meaning with reference to given provisions of the constitution and the existing society. In different cases. Gajendragadkar, C.J. expressed the view that Fundamental rights and the Directive Principles of state policy contained in Articles 38, 39, 41, 46 constitute the meaning of social justice in India. But it is submitted that the social justice act to vary with the populism prevailing in a given situation, e.g. Right to property would be regarded as a component of social justice, where as after the 44th Amendment in 1976 it would not be regarded so.

The founding fathers of our constitution clearly laid down Socio-Economic justice as a goal to be achieved by the future Governments in India, and did not favour the idea of incorporating in the constitution particularly means to achieve it. Thus every Government which purports to act within the constitution frame work is duty bound to strive to secure Socio-Economic justice for the citizens.

This further takes to understand the real meaning of the concepts of Socio-Economic justices. The opinions expressed by some of the members

in the Constituent Assembly may, perhaps helps us to find out its real meaning in proper context.

According to M.R. Masani, the phrase “Socio-Economic justice”, clearly rejects the present social structure and the social statusquo,. ‘It also means, that the people of this country, so far as any constitution can endow them, with great social security - the right to work or maintenance by the community⁷. In Masani’s view, the Objective Resolutions also”, envisages for reaching social change – social justice in the fullest sense of the term - but it work for those social changes through the mechanism of Political Democracy and individual liberty⁸.

Speaking on the same subject, Seth Govind Das said : “Keeping in view the conditions of the world and the plight of India, we can say that our Republic will be both democratic and Socialistic..... If true place is to be realised through socialism. No other system can give us the true place⁹. As to Economic justice, N.V. Godgil said that it could only be secured if the means of production in the country are owned by the community as against the private individual¹⁰. Referring to Socio-Economic justice contemplated in the Resolution S. Radha- Krishana said that it intended to effect a smooth and Rapid Transition from a state of serfdom to one of freedom¹¹. According to the need for such a chance, he said, ‘ It is therefore necessary that we must remake the material conditions; but apart from remaking the material conditions, we have to safe guard the liberty of human spirit¹².

The preamble of the Indian constitution states that the people of Indian have solemnly resolved ‘to secure to all its citizens - Social, economic and political....., equality of status and of opportunity. The Objective Resolution from which the above phrase has been curved out states. ‘ The Constituent Assembly declares its firm and solemn resolve..... to draw up for her future governance a constitution¹³ :

- “(a) *Where in shall be guaranteed and secured to all the people of India justice, social Economic and Political; Equity of status, of opportunity, and before the law... .. and*
- (b) *Where in adequate safe guards shall be provided for minorities, Backward tribal areas, and depressed and other backward classes”* ¹⁴.

The concept of Socio-Economic justice which is enshrined in the preamble contains the aspirations of the people of India who have established the constitution.

The Supreme Court in **Minerva Mill's Case**¹⁵ observed that the edifice of our constitution is built upon the concepts crystallized in the preamble. Words ‘Social Justice’ used are capable of different meanings and connotations. The term ‘Social justice’ or its variants ‘justice Social and Economic’ occurs in the preamble and Article 38 of the constitution. This term face critical comments by some jurists. C.K. Allen¹⁶ says that we hear much today of ‘social justice’, I am not sure that those who use the term glibly know clearly what they mean by it..... but whatever ‘social justice’ does ,mean, it is certainly same thing very different as Aristotle conceived it.”

Under the concept of welfare state, the primary function of the state is to attack the problem of poverty. Democracy realizes that this problem which concern an overwhelmingly large number of citizens cannot be successfully met unless it wisely uses its mighty weapon of law and attempts to restore balance to the Economic structure and to remove the cause of Economic tension from the body politics of the community. All attempts made by democratic legislators to meet the challenge of poverty constitute attempt, to give the citizens of state Economic justice. Equality of opportunity to all citizens to develop their individual personalities and to

participate in the pleasures and happiness of life is the goal of economic justice. Social justice as distinguished from Economic justice has a special significance in the context of Indian society. Social justice in the comprehensive sense includes both Economic and Social justice.

The concept of social justice is thus a revolutionary concept which gives meaning and significance to the democratic way of life and makes the rule of law dynamic. The concept of social justice creates in the mind of masses of this country a sense of participation in the glory of India's political freedom. When the Indian democracy seeks to meet the challenge of Socio-Economic inequality of its legislative process and with the assistance of the rule of law, it virtually seeks to achieve economic justice without any violent conflicts¹⁷.

Social justice, in short is the harmonization of rival claims of the interest of different groups and sections in the social structure by means of which alone is possible to build up a welfare state¹⁸.

Social justice requires abolition of all sorts of inequalities which arises due to wealth, race, caste, religion and title. Thus the provision for humane conditions of work, maternity relief, leisure and cultural opportunities to every individual; prevention of exploitation of child labour and industry, provisions of free primary education for all, the promotion of the educational and economic interest of the backward classes, are all programmes of social justice¹⁹.

The ideal of economic justice means that there will be no distinction between man and woman from the stand point of economic value. In short, it means equality of reward for equal work (Article 39(d)). Every man should get his just dues for his labour, irrespective of caste, sex or social position. It means the abolition of those economic conditions which ultimately result in the inequality of economic value between man and man, viz, the

concentration of wealth and means of production in the hands of a few (Article 39(c)). Though our constitution is not tied to any particular school of social philosophy like socialism, communism, or the like and though it does not advocate state ownership of the means of production. It holds out the above ideals of economic justice in the Directive Principles of the state policy ²⁰.

(ii) SCOPE OF SOCIO-ECONOMIC JUSTICE:

The Socio-Economic Objective of the constitution found elaborate expression in the incorporation of 'Directive Principles of State Policy' in the part IV of the constitution. It indicates that the framers of the constitution wanted to establish Economic democracy. Through the 'Directive Principles', they wanted to give Socio-Economic content to the Political Freedom ²¹.

While laying down the Directive, the framers of the constitution intended to set out the aims and objectives for which the people had cherished for, following the great renaissance witnessed in the second half of the 19th century, and which provided for the motivation for the peaceful Revolution and the Programme of social reconstruction and economic upliftment inaugurated by Mahatma Gandhi and many other leader in the 1st half of this century.

This objective was intended to be achieved, partly, by the grant of equal fundamental rights equally to all and by making them justiceable and enforceable against the state by the Supreme Court, and partly, by requiring the state to frame its policies and plans in accordance with the directives which without confessing any individual rights upon the people set out certain objects of the National public policy and heads of public purposes.

It is intended to achieve Socio-Economic justice and equality and peaceful revolutions without the ethos of class struggle. The Directives are in general framed with a view to accommodate the views of the many²².

As a matter of fact most of the principles laid down in the part IV of the constitution related back to 1931. When the Indian National Congress resolved that the state should safe guard the interest of the people. The law minister in the Constituent Assembly proposing for the Directive Principles said that certain directions had to be given to parliament and Government as to how and in what manner they should exercise their legislative and Executive powers so that these principles could infact be materially realized in all respects. The Government was supposed to function in such a way so as to bring reforms under those Directive Principles which were not to be impaired in any provision of the constitution.

The Directive Principles have been prescribed as the fundamental guide lines for the republic form of Government. Therefore it is the supreme duty of the state today to apply these principles in making law for the governance of the country. If the state fails to perform this positive duty, it will be a breach of the duty. The basic aim of the policies of the state specified in the part IV of the constitution is to promote the welfare of the common man and to bring the radical Socio-Economic changes in the structure of our country so that the country's all round advancement could be accelerated. The main aim of the Directive Principles is to fix certain Social and Economic goals so that social change may come in the society by peaceful revolution. This revolution is inevitable to fulfil the basic needs of the common men. Therefore, the need of the time is that for the successful democratic system with socialistic aim, an effective implementation of these positive obligations enshrined in part IV of the constitution is an imperative.

If any Government of the day ignores them, the people of this country will also ignore it at the polls.

The sole purpose of the law is that it exists for the well being of the people and to establish such social order in which justice social political and economic be available to them. That is why the Supreme Court has given a fresh look to the importance of the Directive Principles in the **Kerala Education Bill** ²³. **Hanif Qureshi Case** ²⁴. In **Kameshwar Singh case** ²⁵, the Supreme Court involving community interest over individual interest, while Hidayatullah J. in **Sajjan Singh case** ²⁶ placed rights of society over the individual with the time gap the Supreme Court through **Keshevananda Bharti case** ²⁷ has guaranteed hope in the mind of the Indians that Directive Principles have limited Primacy over certain fundamental rights also.

In **Minerva Mill Case** ²⁸, the Supreme Court realizing the importance of the Directive Principles of the State Policy. For over all welfare of the people and to meet the end of Socio-Economic justice opined that in case of conflict between then Fundamental Rights and Directive Principles of State Policy, the later would have preponderance.

Regarding the Preamble and the Directive Principles together makes it clear that attainment of Socio-Economic justice was the goal of republic. The Directive Principles have been declared to be fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws ²⁹. The main object of the Directive Principles is to direct the state to secure for the citizens men and women equally, the right to an adequate means of livelihood, better distribution of resources of the community and to check the evils of concentration of wealth, Equal pay for equal work; Protection against abuse and exploitation of worker's necessity; the protection of their health and strength, to secure for children opportunities and facilities to develop in healthy manner and in conditions of

the freedom and dignity ³⁰ and to protect childhood and youth against exploitation ³¹. The state is to secure equal justice and free legal aid ³². The state is required to make provisions for securing the right to work, to education and to public assistance in case of unemployment, old age sickness or disablement and in other cases of undeserved wants ³³. The state is enjoined to make provisions for just and humane conditions of work and for maternity relief ³⁴. The state shall secure work of a living wage, and conditions of work ensuring a decent standard of life ³⁵. The state is to take steps to secure the participation of workers in the management of industries³⁶. The state shall endeavour to provide free and compulsory education to all children until they complete 14 years of age ³⁷. The state is to promote with special case the Education and Economic interests of the weaker sections of the people particularly the Scheduled Castes and Scheduled Tribes and protect them from social injustice and all for not of exploitation ³⁸. The state shall consider among its primary duties to raise the level of nutrition and the standard of living and the improvement of public health ³⁹. The state shall endeavour to organize agriculture and animal husbandry and should take steps for preserving and improving the breeds and prohibiting the slaughter of cow etc. ⁴⁰.

As we know that, the Hindu social structure is based on castes and communities which creates wall and barriers of exclusiveness. It also creates the feeling of inferiority and superiority. This creates social inequality and this is another serious problem to the democracy in India. This social inequality a particularly reprehensible form in relation to backward classes and communities which are treated as untouchable; and so the problem of social justice is an urgent and important in India as is the problem of Economic justice.

The problem of poverty and unequal distribution of wealth industrial labour has become very conscious. Problem of poverty and social inequality prevails almost in all villages. Harijans citizens suffers from social inequality and Economic inequality. They constitute a large class of landless, labourers who are treated as untouchables by the rest of the community. Their condition is very miserable, they have no houses to live in, no clothes to wear, they do not get food to eat and sometime even decent drinking water is beyond their reach. The concept of social justice in its comprehensive form regard, this as a blot an India's policy and seeks to remove it fastly through the constitution and then by legislative process.

Part IV of the constitution contains Directive Principles of State Policy. These principles are no doubt unjusticeable and cannot be judicially enforced. It is obvious that the constitution makers expect the Government of the different states as well as the Central Government to bear these Directive Principles in mind and mould their policies from time to time so as to give effect to them. Article 38 requires that the state should make an effort to promote the welfare of the people of securing and protecting as effectively as it may a social order in which justice, social, Economic and political, shall inform all the institutions of the national life. In other words, the promise made by the constitution to the citizen of India in its Preamble is directly included in one of the directive principles of state policy. Article 39(a) requires that the citizens shall have the right to an adequate means of livelihood. Article 39(e) lays down the principle that the health and the strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by Economic necessity to enter avocations unsuited to their age or strength and 39(f) proclaims that childhood and youth should be protected against exploitation and against moral and material abandonment. Article 41 recognizes every citizens right

to work, to education and to public assistance in cases of unemployment, old age sickness and Disablement and in other cases of undeserved want. Article 42 stresses the importance of securing just and humane conditions of work and for maternity relief. Article 43 holds before the working population the ideal of the living wage, and Article 46 emphasizes the importance of the promotion, Educational and Economic interest of Scheduled Castes, Scheduled Tribes, and other weaker sections. These directive principles lay down a policy of action for the different State Governments and the Central Government and in a sense they recognize the validity of the charter of demands which the weaker sections of the citizens suffering from Socio-Economic injustice would present to the respective governments for immediate relief.

The social problem presented by the existence of a very large number of citizens who are created as untouchables has received the special attention of the constitution and the provisions made by the constitution in respect of this problem clearly indicates its importance. Article 15(1) prohibits discrimination on grounds of religion, sex or place of birth, but 15(3), 15(4) provide that notwithstanding the general prohibition contained in 15(1), the state would be entitled to make special provisions for women children for the advancement of any socially and educationally backward classes of citizens, or for the scheduled castes and scheduled tribes. In other words, the cases of women and children and the cases of persons belonging to the scheduled castes and the scheduled tribes as well as the educationally backward classes are treated as an exception to the general principle prescribed by Article 15(1). A similar exception is provided to the principle of equality of opportunity prescribed by Article 16(1) in as much as Article 16(4) allows the state to make provisions for the reservation of appointments or posts in favour of any Backward Class of citizens which, in the opinion of the state,

is not adequately represented in services. Article 17 proclaims that untouchability has been abolished and forbids its practice in any form and it provides that the enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law. Thus we can say that various provisions have been prescribed by the constitution of India for achieving the ideal of Socio-Economic justice in this country.

Marxian Prophecy that capitalism will destroy itself by cycle of wars, and that the proletariat can rise to power only by successful and violent class struggle, would be falsified if the ideal placed Indian democracy before itself, of achieving Socio-Economic justice, is reached peacefully, non-violently by democratic process and under the rule of law. That is the significance and importance of the concept of social justice in the Indian context of today ⁴¹.

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CHAPTER II (C)

SOCIAL FRAME WORK OF SOCIAL JUSTICE AND EGALITARIAN IDEOLOGY OF DR. B.R. AMBEDKAR

The task of achieving rapid economic growth and reducing economic inequalities has always remained in the fare front of our state policy since independence. This commitments flows from constitutional provisions and Directive Principles of State Policy. The egalitarian ideology received prominent attention in all Five-Year Plans. Social equality, of which economic equality is only a part, has been regarded as the most important goals of development efforts. Directive Principles envisage economic and social order based on equality opportunity, social justice, the right to work, the adequate wages and a measure of social security for all citizens ¹. The draft Five Year Plan conclusively states: “The basic goal is a rapid increase in the standard of living of the people” , and emphasis is placed on the common man, the weaker sections and the less privileged ².

The constitutional provisions and plans provide prominent role for the state to achieve the objective of equality the first plan states : “The problem..... Is not one of merely rechannelling economic activity within the existing Socio-Economic frame work; the frame work has itself to be remoulded so as to enable it to accommodate progressively those fundamental urges which express themselves in demands for the right to adequate income, the right to work, the right to education and to a measure of insurance against old age, sickness and other disabilities.” ³

The way equality goal is to be achieved has been clearly spelt out in the second plan : “all these measures should be harmonized and brought to a focus in a manner that would ensure an enlargement of incomes and opportunities at the lower end and a reduction of wealth and privilege at the upper end

The adoption of egalitarian ideology was guided by important social consideration. It is quite apparent that inequalities inherent in the traditional rigid caste stratification obstruct free competition and social and occupational mobility. In extreme poverty it tends to make existing inequalities more rigid and unyielding. The restrictions imposed on social intercourse between different levels of caste tend to obstruct the emergence of feelings of brotherhood and compassion.

The critics of egalitarian ideology argue that historically, economic development has often led to greater concentration of wealth and power and thereby increased inequality in income and wealth. Myrdal argues that economic equality is typically the outcome of social inequality and reverse is also true. In view of vast majority of poor people, equality in income and wealth would have added value and inequality would simply mean sufferings for them ⁵.

Our constitutional provisions and legislative measures forbid the practice of untouchability and prescribed safe guards for under privileged communities seeking promotion of economic and educational interests and removal of social disabilities and discrimination suffered by them. Subsequent plans provide increasingly allocation for this purpose.

The root of the problem lies in the fact that the untouchables are financially and economically dependent upon the higher castes, as the latter exercise a near monopoly over production resources. Thus, the constitutional and legal rights and privileges guaranteed to the under privileged community carry little meaning unless they attain same measure of economic dependence.

Through caste system, Hinduism has sanctioned extreme form of inequality which is traditional in its origin. It tended to acquire religious

sanction and therefore efforts to promote equality are often construed as attempts to break the traditions.

Thus it is not surprising to say that the practice of untouchability and attended disabilities continue to operate in both urban and rural areas. Even official development programmes do not offend the feelings of high Hindu caste. The rural development programmes, subsidy schemes of reservation in educational institutions and jobs benefitted only a few. According to Srinivas such programmes have produced a previously unknown competition among the caste groups to be classified as backward' for the purpose of receiving special programmes benefit and he concluded that, 'by its reckoning about three quarters of the Indian people are "backward"' ⁷.

For the upliftment, emancipation of under privileged communities, a great reliance is placed on 'comprehensive non-violent revolution' and a psychological revolution among the economic, social and political elites. But all these programmes of improvement of masses operate mainly in accordance with the power structure. Those who enjoy power and make decisions generally belong to upper, well to do class. In context masses are generally poor, ignorant, inarticulate and stratified by caste and communal considerations. The poor believe that their inferior status is ordained by heaven. Under these circumstances, the clamour for economic and social revolution is more apparent than real ⁸.

Our plans have made strong commitment for achieving economic equality, but they did not seriously attempt as to how economic development should be guided to create greater equality. They generally lay stress on increases in total output. Many inegalitarian measures adopted by the Government, the favour middle and upper classes and discriminate against vast majority of the common people.

(i) AMBEDKAR'S SEARCH FOR SOCIAL JUSTICE:

Ambedkar's life was a search for social justice, like the Harijans (dalits) of his time, Ambedkar has experienced the inhuman practice of caste system particularly untouchability.

“Dr. B.R. Ambedkar was all sound and jury against social injustice. His weaponry was legal political his anathema Hindu caste system encluseivism and his ambition social democracy..... His life was a flaming forge, his commitment was to free the ancient unfree, his economics, law and politics were welded into a constitutional militancy and geared to a social emancipation movement”⁹.

Dr. B.R. Ambedkar struggled for social justice, both in pre-Independent India and in the Constituent Assembly.

(ii) QUEST FOR SOCIAL JUSTICE IN BRITISH INDIA:

During his time Ambedkar was undoubtedly the most articulate spokesman of the exploited and the down-trodden in the Indian society, particularly of the Depressed Classes. He held pragmatic and uncompromising views on the amelioration of the sufferings of these classes and the role of government in this regard. In innumerable statements, representations and evidences he came out in support of adequate representation and constitutional safe guards for the Depressed Classes.

On May 29, 1928, Ambedkar submitted a statement before the Indian Statutory Commission (better known as Simon Commission) on his arrival in India. In his ‘statement concerning the safeguards for the protection of the interests of the Depressed Class as a Minority in the Bombay Presidency, and the changes in the composition of and the Guarantees from the Bombay Legislative Council Necessary to Ensure the some under Provincial Autonomy’ Ambedkar demanded protection through adequate representation for the Depressed Classes. He was in favour of taking into consideration population and social status to indicate the quantum of

representation. Moreover, it was the responsibility of the Government to ensure the spread of Education, to make no discrimination in recruitment and to provide for adequate safeguards: In his words:

“It must be admitted that population is a measure by which we evaluate the representation that is to be granted to any community... ..It must however be recognized that the strength of the community cannot be taken as a sole factor in determining matters of this sort. The standing of a community is no less an important factor to be taken into account in determining its quota of representation.....It follows from the recognition of the principle that the lower the standing of a community the greater is the electoral advantage it must get over the rest. There can be no two opinions that the standing of the Depressed Classes, both educational and economical, is the lowest in his Presidency”.

Dr. B.R. Ambedkar therefore demanded :

“that the education of the Depressed Classes shall be recognized at the first charge on the revenues of the province... .. That the right of the Depressed Classes to unrestricted recruitment in the army, navy and police shall be recognized without any limitation as to caste . That for a period of 30 years, the right of the Depressed Classes for priority in the matter of recruitments to all posts, gazetted as well as non-gazetted, in all civil services, shall be recognized by the Provincial government”.

And finally, Dr. Ambedkar insisted on adequate safeguards. The first essential of any scheme of reform is that adequate safeguards should be provided for the good Government of the inarticulate masses of the population.

On October 23, 1928 Dr. B.R. Ambedkar in another statement before the Simon Commission clarified two points. He said that Depressed Classes and 'untouchables' were synonymous and that the two classes must be treated as a distinct minority separate from Hindu community.

The Nehru Report Came, under Dr. Ambedkar's indictment around at this time. The Nehru committee had been constituted by representatives of different political parties in 1928 under the chairmanship of Pt. Motilal Nehru to draft of constitution. In this document called Nehru Report, the committee had stated the problem of the 'untouchables' was a social or a religious problem, but not a political problem, therefore it made no special provision for the representation of the Depressed Classes in legislatures. Ambedkar in his editorial in Bahishkrit Bharat of January 18, 1929 wrote :

"If the problem of the untouchables is a social problem, is not that of Muslim also a social problem? The Muslim too suffer from the consequences of the distorted vision of the upper castes of the Hindus, in the same manner as do the untouchables... .. It is our first conviction that the Nehru committee Brahminical Strategy aims at perpetuating the Hindu social hierarchy in their struggle for political power What else could be the reason for its existing certain facilities to the Muslims and deny similar facilities to the backward and Untouchable classes of the Hindus?"

On May 17, 1929 Ambedkar submitted a Report on the constitution to the Government of Bombay Presidency

Here he stated:

"The legislative should be wholly elective..... Reserved seats should be provided for Mohammedans, Depressed Classes and Anglo-Indians... .. The legislature should consist of

140 members; of the Mohammedans should have 33 and the Depressed Classes 15... There should be complete provincial autonomy.... There should be a provincial Civil Service. And a Provincial Civil Service Commission. Indianisation of the services should be made for the fulfilment of the claims of the Backward classes....

A committee had been constituted by the Government of Bombay in November 1929. Dr. Ambedkar was a prominent member of this committee, popularly known as State Committee. The committee submitted its report to the Government in March 1930:

"The committee recommended scholarships and students' hostel. For the economic upliftment of the backward classes, it stressed on the need to recruit depressed classes in the police and urged that the present bar to the recruitment of the Depressed Classes in the army should be removed; that a Backward Class Officer should maintain list of qualified candidates from the backward classes and promote their recruitment; that hereditary services rendered by the backward classes should be enquired into; and that housing schemes for the backward classes should be promoted. On the social front, the committee recommended legislation to prevent dedication of devadasis : and that the social boycott be checked by propaganda and legislation"¹⁰.

At the Round Table conferences held in London during 1930-32 Dr. Ambedkar played a stellar role and was able to focus British and world attention to the problems of the Depressed Classes and other weaker sections.

At the First Round Table Conference, Dr. Ambedkar spoke on his scheme of political safeguards for the protection of the Depressed Classes in the future constitution of India. He demanded that in the future constitution of India, the Depressed Classes should be given a fundamental right enacted in the constitution which will declare 'untouchability' to be illegal for all public purposes. "Secondly this fundamental right must also invalidate and nullify all such disabilities and all such discriminations as may have been made higher to....."¹¹. He demanded safeguards to ensure the right to adequate representation in the legislature. Speaking on joint versus separate electorates Ambedkar said, "we, the Depressed Classes demand a complete partition between ourselves and the Hindus. We have been called Hindu for political purposes, but we have never been acknowledged socially by the Hindus as their brethren"¹².

At the same conference, Ambedkar insisted on recruitment for the Depressed Classes in the services. On January 4, 1931 Ambedkar submitted to the Round Table Conference, a 'Supplementary Memorandum on the claims of the Depressed Classes for special representation, defining the details of the safeguards. He demanded for the Depressed Classes 'representation in proportion to their population as estimated by the Simon Commission and the Indian Central Committee. As regards the methods of representation, he demanded that 'the Depressed Classes shall have the right to elect their representatives to the Provincial and state legislatures through separate electorates for their voters."

On January 19, 1931, Dr. Ambedkar reminded the British Government its responsibilities towards the Depressed Classes. Dr. Ambedkar's cumulative role in ensuring justice for the Depressed Classes had its desired effect upon the British authorities. On August 17, 1932, Prime Minister MacDonald announced the 'Communal Award' creating separate

electorates for the Depressed Classes. These classes had been sanctioned a distinct status.

Unfortunately this joy was short lived. On August 18, 1932, Gandhi announced his decision to fast unto death, to resist the 'Communal Award'. The untenable position of Gandhi on the issue becomes clear from the following words of Dr. Ambedkar : 'separate electorates are granted not only to the Depressed Classes, but to the Indian Christians Anglo-Indians, Europeans, as well as to the Mohammedans and the Sikhs. Also separate electorates are granted to landlords and traders. Mr. Gandhi had declared his opposition to the special representation of every other class and creed, except the Mohammedans and the Sikhs. All the same Mr. Gandhi chooses to let every body else except the Depressed Classes retain the special electorates given to them."

Dr. Ambedkar pointed out that his primary loyalty was to his people. "I trust the Mahatma will not drive me to the necessity of making a choice between his life and the rights of my people. For I can never consent to deliver my people bound hand and foot to the caste Hindus for generations to come. Ultimately however Dr. Ambedkar relented, and practically "saved the life of Gandhi by agreeing to amend, the Communal Award, in a manner agreeable to Gandhi. This was the Poona Pact signed by Dr. Ambedkar, Gandhi and others on September 24, 1932, in the Yervada Prison.

Dr. Ambedkar was terribly unhappy with the Poona Pact. When elections proved his misgivings true, he blamed the Poona Pact squarely for depriving scheduled castes of their genuine rights. Dr. Ambedkar ultimately lost faith in the British and discounted all hopes of securing social justice for his brethren under the British rule. He was of the view that adequate constitutional rights for the scheduled could only be secured only under a free constitution.

Dr. Ambedkar's struggle for this marked by great expectations, hopes and aspirations, as well as disappointments and frustration. None the less this was a period of sustained hard work where valuable lesson were learnt. This experience played a major role in Dr. Ambedkar's quest for constitutional rights and social justice in the Constituent Assembly.

(iii) QUEST FOR SOCIAL JUSTICE IN THE CONSTITUENT ASSEMBLY:

Dr. Ambedkar came to be closely associated with the Drafting of a constitution for free India as Chairman of the Drafting Committee and as a member of Advisory Committee as Minorities and Fundamental Rights. Dr. Ambedkar kept in mind the interests of the Scheduled Castes while participating in the process of Drafting the constitution. He said that he only came into the Constituent Assembly with no greater aspiration than to safeguard the interests of the Scheduled Castes. Dr. B.R. Ambedkar was a party to a general consensus in the Constituent Assembly that the term 'Backward classes' would cover three principal components, the Scheduled Castes, the Scheduled Tribes and the Other Backward Classes. And Dr. Ambedkar addressed himself to the task of securing social justice for all backward classes in the country, under the mandate of new constitution.

(a) THE FUNDAMENTAL RIGHTS :

Dr. B.R. Ambedkar was the champion of the downtrodden. There was a need for a Bill of Rights in the Indian constitution. He was pleading continuously for an electorate system of fundamental rights for minorities for all citizens in general. His fight for social justice was the main plank in his struggle as the leader of minorities. According to him social justice could not be secured to one and all unless it was enshrined in the constitution itself.

One of the first tasks to which the Constituent Assembly addressed itself was the formulation of a bill of rights with pride of place accorded to

social justice and non-discrimination. Dr. B.R. Ambedkar described 'the most criticized part' of the constitution, part III dealing with Fundamental Rights. The Fundamental Rights in the Indian Constitution are more elaborate and comprehensive than in the Bill of Rights or in any other Constitution. Constitutional provisions aimed at preventing discrimination and promoting social justice are the Fundamental Rights guaranteeing equality before law and equal protection of law (Article 14), prohibition of discrimination as guards of religion, race, caste, sex or place of birth (Article 15), equality of opportunity in matters of public employment (Article 16), abolition of untouchability (Article 17), and prohibition of traffic in human beings and forced labour (Article 23).

It is clear from the above provisions that Dr. B.R. Ambedkar and the founding fathers made genuine efforts to constitutionally guarantee equality to the disadvantaged sections of the people. The provisions aimed to abolish social inequality, social stigma and social disabilities in our society.

Reacting to the exceptions and qualifications to the Fundamental Rights, Dr. Ambedkar pointed out that the whole criticism about fundamental rights is based upon a misconception. Firstly it seeks to distinguish fundamental rights from non-fundamental rights is not sound. It is incorrect to say that fundamental rights are absolute while non-fundamental rights are created by agreement between parties or fundamental rights are the gift of the law. Because the fundamental rights are the gift of the state, it does not follow that the state cannot qualify them.

Conclusively speaking, Dr. Ambedkar and the founding fathers did the right thing by emphasizing that the objective of the constitution was to establish an egalitarian society where rights are guaranteed not to few but to every member of the society. They firmly believe rich and poor are reduced. The right to equality of opportunity has no meaning. The Indian

Constitutional format in respect of human rights was a significant attempt at conflict resolution, for the delicate balance between political and civil rights on the one hand and social and economic rights on the other hand, or between the individual rights and demands of social justice.

(b) THE DIRECTIVE PRINCIPLES OF STATE POLICY :

While the Fundamental Rights guarantee the rights and liberties of the individual against arbitrary state action, the Directive Principles seek to emphasize economic and social goals. It was the intention of the founding fathers to incorporate into the constitution concepts and principles that should determine governmental activities which would bring about a social and economic revolution in the country. Pt. Nehru and Dr. Ambedkar believed that success of this revolution will be India's survival.

Ambedkar defended the Directive Principles in the following words.....
 “Whoever captures power will not be free to do what he likes with it. In the exercise of it, he will have to respect these instrumentals of instructions which are called Directive Principles. He cannot ignore them. He may not have to answer for their breach in a court of law, but he will certainly have to answer for them before the electorate at election time. What great values these Directive Principles possess will be realized better when the forces of right contrive to capture power¹³.

Further, Dr. Ambedkar categorically stated that the Directive Principles were not intended to be mere pious declarations. “It is the intention of the Assembly that in future both the legislature and the executive should not merely pay lip service to these principles in this part, but that they should be made the basis of all executive and legislative actions that may be taken here after in the matter of the governance of the country¹⁴.

Dr. Ambedkar defended the clause in Article 37 in the following words 'A state first awakened from freedom with its many preoccupations must be crushed under the burden unless it was free to decide the order, the time, the place and the mode of fulfilling them ¹⁵. He further stated..... "what should be the policy of the state, how the society should be organised in its social and economic matters must be decided by the people themselves according to time and circumstances. It cannot be laid down in the constitution itself, because that is destroying democracy altogether... ¹⁶.

The Directive Principles strive to create a welfare state and a first social order. Where there is no social exploitation. Article 38 contains the essence of these principles : 'The state shall promote the welfare of the people by securing and protecting effectively as it may a social order in which justice-social economic and political shall inform all the institutions of national life.

(c) SPECIAL PROVISIONS:

The provisions of Part XVI of the Indian constitution are the special provisions for the Scheduled Castes and Scheduled Tribes, the Anglo-Indians and socially and educationally Backward Classes Article 330 & 332 provide that the seats shall be reserved for Scheduled Castes and Scheduled Tribes in the House of the people and Legislative Assemblies of the state respectively Article 331 & 333 provide for representation of the Anglo-Indian community by nomination by the President and the Governor, in case the community is not adequately represented in the union and states lower Houses. According to Article 334, such reservations is fixed for 10 years from the commencement of the constitution. According to Article 335 "claims of the members of the Scheduled Caste and Scheduled Tribes shall be taken into consideration, consistent with the maintenance of efficiency of administration, in making of appointment to services and posts in connection

with the affairs of the union or of a state”, Articles 336 & 337 deals with the special provision respectively for the appointments in certain services and educational grants for the Anglo-Indian community. Article 338 provides for a special officer for the Scheduled Castes and Scheduled Tribes to be appointed by the president whose duty is to investigate all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes and to report to the President. For the purpose of Article 338, references to Scheduled Castes and Scheduled Tribes are to be construed as including references to such other backward classes as may be specified by the President on receipt of a report from the commission which may be appointed under Article 340(1). Article 339, provides for the appointment of a commission to report in regard to the administration of the Scheduled areas and the welfare of the Scheduled Tribes. Article 340(1) provides for the appointment, by President, of a commission to investigate the conditions of educationally backward classes within the territory of India and make recommendations as to the steps taken by the union or any state to remove such difficulties and to improve their condition etc.

There were many in the Constituent Assembly who objected to the special provisions providing for reservation. The general consensus was however in favour of reservation of jobs for Scheduled Castes and Scheduled Tribes. Dr. Ambedkar had the last word when he stressed the importance of this provision to meet the demand of the communities which have not had so far representation in the state.

There was a protected debate in the Constituent Assembly on the desirability of restricting the concessions to a period of 10 years. Dr. Ambedkar preferred a more flexible policy, one had favoured a longer time to do the necessary leveling. But he let it lie and made the observation, ‘It at the end of 10 years, the Scheduled Caste find that their position has not

improved or they want further extension..... It will not be beyond their capacity to invent new ways of getting the same protection which they are promised here.”

Speaking in general about the special provisions that has been incorporated into the Indian constitution Dr. B.R. Ambedkar made the following observation :

“Speaking for myself I have no doubt that the Constituent Assembly has done wisely in providing such safeguards for minorities as it has done. In this country both minorities and majority have followed a wrong path. It is wrong to deny the existence of minority by the majority. It is equally wrong for the minorities to perpetuate themselves. A solution must be found which will serve a double purpose. It must recognize the existence of the minorities to start with. It must also be such that it will enable majorities and minorities to merge someday into one. The solution proposed by the Constituent Assembly is to be welcomed because it is a solution which serves this two fold purpose. To die-hards who have developed a kind of fanaticism against minority protection, I would like to say two things. One is that Minorities are an explosive force which, if it erupts, can blow up the whole fabric of the state... ”

Thus, Dr. Ambedkar applied his mind in a remarkable manner to the problems confronting the country. He was a great social reformer, a political leader and a spiritual guide of the untouchables.

Ambedkar’s constitutional philosophy revolved around social justice and change through perfectly constitutional means. He desired to create an equal society through the process of constitution making. He dreamt of an

India where there would be no discrimination between man and man, no exploitation, no untouchability and no degradation Dr. Ambedkar approached the problem from the wide perspective of nationalism, democracy, humanity and justice. Dr. Ambedkar expertise as a constitutional expert went a long way in enshrining the concept of political democracy in Indian Constitution. According to Dr. Ambedkar political democracy cannot lost unless there lies at the base of social democracy. According to him social democracy means a way of life which recognizes liberty, equality and fraternity as the principles of life. Dr. Ambedkar also recognized the fact that the lofty ideals expressed in the constitution would remain as they were, given the nature of contradictions inherent in society. According to him this contradiction should be removed otherwise it will blow up the structure of social democracy which the Constituent Assembly has so laborously built up.

Since Dr. Ambedkar was aware of the existence of economic inequalities in the Indian society, and of its potential to 'blow up' every thing. He well formulated views regarding the elimination of economic inequality. He had said :

"..... old time constitutional lawyers believed that the scope and the function of the constitutional law was to prescribe the shape and form of the political structure of the society. They never realized that it was equally essential to prescribe the shape and form of the economic structure of society, if democracy is to live up to its principle of one man one value....."

Dr. Ambedkar and the Drafting Committee were the agents of the Constituent Assembly. Dr. Ambedkar had played the role of technocrat applying his skill and acumen in drafting the constitution.

It is very unfortunate that Dr. Ambedkar's views on the economic system to be adopted by the independent India did not prevail. Today, after more than four decades of Independence and the working of the Indian Constitution, it is also a fact that social injustice, continue to remain so formidable problem. It is also a fact that economic backwardness is the primary cause for all the sufferings of the poor, the backward and the downtrodden in the Indian society. Ambedkar had strongly warned that this inequality will blow up the structure of political democracy unless contradictions are removed and needs should be taken seriously.

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CHAPTER III

CHAPTER-III (A)

SCHEDULED CASTES (EXPLAINED)

(i) THE INVENTION OF THE SCHEDULED CASTES:

‘Scheduled Castes’ is the most recent of a long line of official euphemisms for ‘untouchables’. The Scheduled Caste category is intended to comprise those groups isolated and disadvantaged by their ‘untouchability’ i.e. because of their low status in the traditional Hindu Caste hierarchy which exposed to them ill-treatment severe disabilities, and deprivation of economic, social, cultural and political opportunities. In the early years of the century the “depressed classes” (as they were then called) became an important focus of concern among the reformers. After 1901, fears of diminished Hindu minorities and proposals for special legislative representation for these very classes propelled ‘untouchability’ into political arena. As concern about these groups grew, the political demands were made on their behalf. On this there was sharp disagreement about the number of persons who belonged in this category.

(ii) DESIGNATION OF SCHEDULED CASTES:

The expression ‘Scheduled Caste’ was first coined by the Simon Commission and embodied in the Govt. of India Act, 1935. Prior to it, the people belonging to the last ‘varnas’ viz. ‘Shudras’ and Avarnas were regarded untouchable castes. ‘Avarnas’ means one who do not belong to ‘Varna’ or exterior castes. Here exterior signifies those group of classes who were required to stay out side the village settlement. The worst part of the matter is that the concept of pollution was attached to these set of

classes, as a result of this they were hated and subjected to social and economic inequality for ages. Official figures of 1931 census shows that these untouchable caste were shown as depressed classes in the record of British India. Gandhiji named people of these classes i.e. Shudras and Avarnas as Harijans. It connotes the idea of persons who are dear to Hari. This name was not liked by the people of community and it was hatred by 'Avarnas' or untouchables. As a result there was an agitation to the Bill using the word 'Harijan' in the Bombay Legislative Assembly. Subsequently in 1938, the word 'Harijan' was replaced by the word 'Scheduled Caste'. Since then this word continued to be used in Government records and notifications issued from time to time. In 1936, the Government for the very first time published a list of Scheduled Castes. This very list was taken into account for providing certain protections and safeguards to these masses.

Scheduled Castes lies at the bottom of social hierarchy and they were considered out side the varna scheme. They were characterised by the convergence of multiple marginalities and commulative inequalities by the upper caste. Economically they are the poorest of the poor who engage themselves in degrading occupations. Socially they were also under privileged because they could not adopt the cultural and religious values of upper caste due to social sanctions. Any attempt of the Scheduled Caste to violate the social norms to change the style of life and to assert for their civil rights was resisted and resented by the upper castes. In a nut shell low rank and exploited conditions of the scheduled castes emanate from commulative inequalities in economic, political and ritual systems.

The leaders of Indian National congress, especially Mahatma Gandhi stood for the gradualist, reconcilatory and cooperative model of political mobilization of untouchables who were named as Harijans (Children of

God). He insisted that Harijans should be treated as Hindus with all religious and political rights of Hindu society. In fact he wanted that they should be integrated into Hindu society and the need for incorporating them in political struggle for independence by abolishing the stigma of untouchability associated with them on the other hand Dr. B.R. Ambedkar organised the Scheduled Castes politically to sharpen their identity as a category in relation to the upper strata so that they could fight for their rights. Due to moderate and militant approaches of Gandhiji and Dr. B.R. Ambedkar, the principle of reservation for the Scheduled Castes was well established into the Government of India Act, 1935, where untouchables come to be known as Scheduled Castes for the purpose of statutory safeguards and other benefits.

In the post independence India, the founding fathers of Indian Constitution took a historic step by abolishing the stigma of untouchability associated with Scheduled Caste not only by granting them equal rights with other citizens but also by ensuring them special privileges for educational, economic and Cultural upliftment to enable them to catch up with those who were ahead of them.

(iii) CONSTITUTIONAL CONCEPT OF SCHEDULE CASTES:

The constitution makers eschewed a connotative definition of untouchability and adopted the same sort of solution as had the British. Lists were to be compiled for each area of those castes which were regarded as needful and deserving preferential treatment rather than provided any standard of selection for those groups beyond the general understanding that they were the 'untouchables' the constitution provided only a procedure for designating them. The President is empowered to specify, after consulting with the Governor of the state, those 'castes, races or tribes or parts of or groups within castes, races and tribes which shall for the

purpose of the constitution be deemed to be scheduled castes in relation to that state ¹.” Once this list is promulgated it can only be changed by the Act of parliament².

A Scheduled Caste order was promulgated by the President in 1950 which basically re-enacted the 1936 list ³. The major addition were four Sikh Caste and the provision for the first time of list for areas which had non previously. They were Rajasthan, Gwalior and Madhya Bharat.

There were few changes in 1951, but these were in the nature of adjudgements and elimination of anomalies rather than any basic change in policy ⁴. The 1951 census revealed that the Scheduled Castes contain over 52 million members, but due to more discrepancies, errors, and oversights, in 1956 the list were revised again⁵. This alteration was made by the Backward Commission which was formed in 1953. The principal changes were the addition of about one million persons each in Rajasthan and in Uttar Pradesh and the inclusion now of all Sikh untouchables. The revised list contain 55.3 millions including 1951 census figures. In 1971 census, the Scheduled contained 80 millions (14.6% of the population).

The changes in the list have been more in the nature of removing anomalies and correcting oversights : moving groups from Scheduled Caste to Tribe lists sorting out discrepancies and errors, rationalising administration. There have been no policy departures other than inclusion of Sikhs. Indeed these had been no further attempt to formulate any criterion. In the first report, the commissioner for Scheduled Castes and Tribes observed Hutton’s 1931 census criteria “appear to hold good for purpose of specifying the Scheduled Castes”⁶. In the late 1950’s the Commissioner remarked that the criteria for classifying caste as scheduled were ‘fairly definite’ ⁷.

Formally, the power to make and change the lists lay with the President (and later with parliament), but it appears that the dominant role was played by the executive, central and state. The lists remained in charge of the Ministry of Home Affairs except for an interval from 1964 to 1973 when this task was housed in the erstwhile Department of social security (later social welfare) ⁸. Although the role of the state is formally consultative, designation seems in fact to be a two stage process in which center or state proposes and attempts to get consent of the other. Where the state is unwilling, listings favoured by the centre can be held up for years. On the other hand, where states have proposed changes in the list, especially inclusions, these have been rejected for lack of any supporting data ⁹.

The selection of Scheduled Castes has proceeded without benefit of single cannotative definition. The selection has been done as the basis 'untouchability' which was measured by the incidence of social disturbances. This criterion has been combined in varying degrees with economic, occupational, educational, residential and religious tests.

The resulting list designates all of these groups who in the view of parliament require the special protections provided by the constitution : it defines who may stand for reserved seats and enjoy benefits and reservations for the Scheduled Castes. But this does not means that every person or groups must be included in the groups of untouchables by any conceivable definition. It basically omits some groups which historically suffered disabilities (e.g. Ezhuvas) or which would be untouchables in terms of 1931 census tests. And it excludes Non-Hindus (other than Sikhs) who clearly seem to be untouchables within the judicial test of 'origin in a groups considered beyond the pale of the caste system' ⁹. There is no single

inclusive list of all groups considered untouchable, just as there is no single criterion for identifying them.

In the absence of a definite criterion the lists have remained stable for more than 30 years. Some groups continue to petition for inclusion. The Commissioner observes that 'there has been a tendency of some castes and communities to use every opportunity for pressing their claims for inclusion in the list of Scheduled Castes/ Scheduled Tribes ¹⁰. The changes that have occurred have been rationalized and extensions of existing criteria to overlooked groups and areas previously omitted, rather than any change in criteria, beside this there have not been any significant exclusions with the exceptions of the 'voluntary' departure of converts to Buddhism. There has been no litigation about inclusion or exclusion of any groups challenging the untouchability' criterion or its application but there has been litigation on the religious and residence tests.

With whatever be the other factors, the Scheduled Castes have been chosen by the criterion of low social and ritual standing. In the selection of other Backward Classes, the use of social and ritual status as a criterion of the backwardness of the group has been severely restricted by the courts. But such criteria have been predominant in the primarily chosen precisely on the ground of their low status (social & ritual) in the traditional social hierarchy. The justification for employing low status and attendant disabilities as a criterion for preference is that these groups are generally lowest in income, education, health, cultural resources, and economic opportunities. These very castes are backward because they are subject to disabilities which impeded advancement by individual effort and denied them opportunities for groups social mobility ¹¹.

This emphasis has endured over the years. In the debate ~~proceeding~~ passage of the 1976 amendments to the Scheduled Castes Order the view

surfaced that “it is basically the economic and social backwardness of a caste which should entitled it to be categorized as a Scheduled Caste ¹². But the Home Minister was emphatic in reiterating that the concept of Scheduled Castes is one of backwardness stemming from untouchability. “It is not neglect, it is not mere poverty, it is not mere backwardness that entitles a man to come under the Scheduled Castes ¹³.

However, the legislative prohibition of disabilities and social practice resulted in lessening of disabilities and to the extent that preferential treatment increases educational attainments and economic opportunities, the correlation between low ritual standing and economic and social backwardness will be weakened. If ‘untouchability’ is a useful criterion for identifying those groups which are at the bottom in terms of economic educational and cultural resources of opportunities, the very success of redistributive measures might lead to a discrepancy between ritual standing and other indica of backwardness. It would seem that parliament’s power to designate Scheduled Caste is sufficiently broad to permit the use of standards which would decrease the role of ritual standing and disabilities and increase the emphasis on educational, economic and cultural criteria. There is a room for eventually changing the mix of ritual and other factors in the selection of scheduled castes.

In June 1965, a committee was appointed by the Government to advice on revision of existing lists of Scheduled Castes and Scheduled Tribes under the chairmanship of B.N. Lokur, the law secretary. The Lokur Committee reported promptly on 25 August 1965, it found that in view of the constitutional abolition of untouchability.

The committee noted with satisfaction that untouchability was ‘fast disappearing, particularly in cities and towns, and even where it is practiced, it is considerably in diluted form ¹⁴. They observed that the line

of demarcation between high and low castes which was clearly clear in the past, has tended to become blurred ¹⁵.

The committee devoted most of its attention to many technical changes in the list, including a number of minor exclusions and inclusions. On major de-scheduling they curiously omitted to utilize any of the fresh and abundant 1961 census data. Instead they cautiously put forward a list of communities adjudged to be 'relatively forward' by several persons who appeared before us including eminent social workers. In addition to 14 tribes, this list included 28 scheduled caste listings, ranging from the insignificant to such numerous groups as the Chamars (Bihar, U.P., and Punjab) and the related Jatav (M.P), the Dhobis (West Bengal, Orissa; Bihar & U.P.; the Maharas (Maharashtra & M.P) ; the Malas (Andhra Pradesh) ; and the Namasudras and Rajbanshis of Bengal. In a kind of dim reflection of the disputes of the early 1930's the proposals would have left the southern scheduled caste virtually intact, but practically halved the scheduled caste population in the north. In addition it would have eliminated about a fifth of the scheduled tribes.

The report was received with angry resistance by Scheduled Caste spokesman. At a tumultuous meeting with the Law Minister (then in charge of the social security portfolio), Scheduled Caste Members of Parliament agreed with the few inclusions but would not countenance any exclusions to have retreated. Scheduled Caste leaders and government officials concurred that the report was dead.

After 1967 elections, the question was raised again with the added dimensions of the impending debate on whether to extend the reserved seats, due to expire in 1970. In the mean time, congress (the principal political beneficiary of reserved seats) had become considerably more dependent on the adherence of the occupants of the reserved seats, who

now supplied its much narrower plurality in the Lok Sabha. The Congress plurality was 38 seats (279/528), Congress held 72 of 114 reserved seats ¹⁶.

On August 12, 1967, a bill to amend the lists was introduced by the Government; the bill's proposed list included every one of the groups whose possible deletion has been suggested by Lokur Committee. A Joint Parliamentary Committee established to review the lists submitted its report in November 1969. Among the amendments proposed by the Joint Committee were the inclusion in scheduled castes of women who married scheduled caste men, the exclusion from scheduled tribes of converts to Christianity and Islam, and elimination of all area restrictions on scheduled caste status. The conversion proposal provoked great controversy, and neither it nor the removal of area restrictions were accepted by the Government, which proposed a host of amendments to the Joint Committee's version when the bill was taken up in November 1970. Mired in controversy, the bill lapsed with the dissolution of the fourth Lok Sabha in December 1970.

During Emergency Rule in August 1976, a new version eliminated most intra-state area restrictions adding about 2.5 million to the scheduled castes population and over 3 millions to the Scheduled Tribes ¹⁷. Apart from this, the Act maintained a status quo : there were no significant inclusions or exclusions. It did not address any of the touching issues of personal status (of wives, converts or migrants) which had come to surround the application of the lists.

Caste remained the primary basis for designating the Scheduled Castes. Caste plays a dual role in the selection of Scheduled Castes: Castes in the sense of social units are typically the groups which are listed, and it is caste in sense of rank or status in the social religious hierarchy which is the criterion for choosing these groups. But caste is not the only factor in the selection : two other factors are explicitly employed – territory and

religion. Scheduled Castes are designated by the state and sometimes by districts or regions within states. The same caste may be scheduled in one state but not in an adjoining state or one district but not in adjoining district.

The power of the President to specify scheduled castes by districts had been upheld on the ground that the social and educational backwardness of a groups may vary in degree in different areas ¹⁸. Specification by states has been held to be constitutionally required. A postal clerk residing and working in Orissa was a member of Konda Kapus, a groups listed as a Scheduled Tribes in neighbouring Andhra Pradesh, but not in Orissa. After being appointed to a higher post against a reservation for scheduled tribes, he was reverted on the ground that Konda Kapus was not a Scheduled Tribe in Orissa where he was a permanent resident. He argued that he should be accounted a scheduled tribe any where for purposes of central government employment, since central legislation clearly out lowed state residence requirements for central jobs ¹⁹. The High Court turning to the constitutional provisions for designating scheduled tribes (Article 342 (1)) finds that the phrase “shall be deemed to be scheduled tribes in relation to that state” means that in order to get the benefit of being a member of a scheduled caste or a scheduled tribe in the matter of public employment, the person claiming it should be a member of such caste or tribe in relation to the particular area or state where he is residing and where he seeks employment ²⁰. Thus the court takes a restrictive reading of residence rules to be a constitutional requirement. On number of occasions, officials and political leaders have taken the view that a constitutional amendment could abate these restrictions ²¹.

However there has been some problem in the area limits as to whether they correspond with any exactness to the different deprivations and need. More troubling still are the difficulties presented by cases of

spatially mobile members of scheduled castes and scheduled tribes. According to the Scheduled Caste order caste shall be deemed to be the scheduled castes so far as regards members there of resident in the localities specified in relation to them respectively. The commissioner of Scheduled Castes and Scheduled Tribes in his first report in 1951 observed that the provision was ambiguous ²². If the example of Khatik caste, which is a scheduled caste in Punjab but not in neighbouring Uttar Pradesh. The question arises if U.P. Khatik moves to Punjab where this caste is considered as a Scheduled caste, can be a member of scheduled caste or not or if a Punjab Khatik moves to U.P., no longer remain a member of scheduled caste in relation to Punjab or in relation to concessions granted by the Central Government. The Ministry of Law in a streakingly unhelpful interpretation said that 'each case will have to be decided on its facts' . But since "residence at time in question" was the "determining factor" they concluded that Punjab Khatik would not be a scheduled caste while residing in U.P. ²³.

The commissioner's example contains a series of puzzles. First, there is the out migration problem. Suppose X leaves a state where X'S are a Scheduled Caste and goes to a state where they are not so listed. Such persons are excluded from any benefits by the prevailing reading of the order. Thus a Dusadh who moved his residence from Bihar (Where this caste was a Scheduled Caste) to Madhya Pradesh (Where it was not) was not a member of the Scheduled Castes for purposes of making a lower deposit when filling a nomination paper²⁴. The same rule applies to intra state territorial limitations. A railway worker resident out side the taluks listed for his tribe was held. Properly denied eligibility for reservation in promotion²⁵.

There is a converse problem of in-migration suppose a member of group X migrates from an area in which the X'S are not Scheduled to an area in which they are. Here the resident list stressed by the courts and officials would seem to argue for inclusion. But the one court that had addressed it decided the other way. 'Suryabashi' was listed as a Scheduled Caste in Jabalpur District. But a Suryabashis migrant to Jabalpur who hailed from an area where Suryabashis were not Scheduled was held ineligible for benefits on the ground that 'only Suryabashis residing in Jabalpur district..... were declared to be scheduled castes under the Presidential Order"²⁶. Apparently the court is looking beyond residence to some notion of origin in the designated groups, a test that proved insufficient in the out going migration cases.

These very issues are decided entirely by textual interpretation without consideration of policies which might provide some guidance here. For example, in migration involves the enlargement of the number of beneficiaries, where as out-migration does not. Again, extension of benefits to in-migrants might induce mobility that was not otherwise economically justified moves.

The logic of these cases points to an even more grotesque result in the case of lateral movement. Suppose a member of group X migrates from state A where the groups is scheduled to state B where it is also scheduled. According to the residence argument of the out-migration, cases, he is no longer entitled to any benefits as an X of state A. Nor according to the origins arguments of the in-migration case, he is entitled to any benefits as an X of state B. One suspects that administrative failure to give full effect to the logic of cases, perhaps augmented by some dissimulation on the part of the migrants, has tempered the effect of these rules and accounts for the infrequency with which these issue have come to court.

The migrant members would lose their scheduled caste benefits remained troublesome. In 1959, the Commissioner raised the matter again ²⁷, this time in connection with the case of a Dhobi whose family origins are in U.P. (Where Dhobi is Scheduled Caste) but was born, brought up, and employed in Bombay (where Dhobi is not a scheduled caste). He claimed that his ancestral property, house etc. were in U.P. and he has no property or house in Bombay, but lived there only for the sake of his employment. This case was referred to the Law Minister who again read the order so that he was excluded a result that the commissioner found anomalous in view of the fact that.

“such persons may actually continue to suffer from all disabilities resultant from the practice of untouchability as they have to maintain all ties with their relations in the home state” ²⁸.

He recommended that migrant scheduled castes and tribes should be eligible for benefits from the central government and their home state at least for a generation ²⁹. No relief for inter state migrants has been forthcoming.

In 1965, the Lokur Committee recommended the removal of inter state area limitations on the ground that they inhibit mobility ³⁰. The Scheduled Castes and Scheduled Tribes Order (Amendment) Bill, 1967, proposed that when a caste is scheduled for one area of state, the members from that area shall continue to be included so long as they reside anywhere in that state ³¹. The 1976 amendment of the lists did not contain this provision, but the need for it was largely dispelled by the abandonment of almost all intra-state area restrictions.

The conferring of Scheduled Status on a ground is a monopoly of the centre. The 1950 Scheduled Tribes Order list for Maharashtra included an item for Halba from six specified taluks in three districts. In 1967, the

Government of Maharashtra ordered that the Halba Koshtis of the whole of Vidarbha region be treated as belonging to the scheduled tribes. A Halba railway worker from outside the listed taluks was deleted from a promotion panel on the ground that he was not a member of Scheduled Tribe. His challenge was repulsed by the Bombay High Court, which held that state's pronouncement could have no effect on his status as a scheduled tribe in connection with any of the affairs of the central government. The court left open the question whether the state might treat him as a scheduled tribe in regard to state services ³².

The issue has never been fully addressed. It must be desirable to allow the state to employ its better – informed judgement about local conditions, there is of course the danger that state use of this power could dilute benefits to those deemed deserving beneficiaries by national policy. The most prominent instance of this is that Maharashtra's treatment of the Buddhists on a par with Scheduled Castes has not been challenged in the court.

Religion was introduced as a qualification into the first scheduled castes order in 1936, which provided that no Indian Christian (nor, in Bengal, those professing Buddhism or a tribal religion) should be deemed a member of a Scheduled Caste ³³. Earlier, it was often recognized that there were comparable depressed groups among Christians and Muslims. But in the disputes leading up to the listing of Scheduled Castes, it was agreed that Muslims and Christians should be excluded ³⁴. This execution was readily understandable, for the major purpose of the list was to provide for electoral, representation, and Christians and Muslims were the beneficiaries of special electoral treatment as minorities ³⁵. In spite of the constitutional ban on religious discrimination, the elimination of separate representation for religious minorities and change in purpose of the list from electoral to

administration of welfare, the religious qualification (or, more properly, disqualification) was retained after Independence. The President's 1950 order provides that "no person professing a religion different from Hinduism shall be deemed a member of a Scheduled Caste"³⁶. An exception was made for Sikh members of four castes. In 1956 it was broadened to include all Sikh untouchables³⁷.

The religious test for scheduled castes is employed, not as a positive test for selecting appropriate groups for inclusion, but as a disqualification of individuals and groups who otherwise meet the criteria, thereby inevitable discouraging conversion. There is a reason to think that this was the least part of its purpose. It does not operate as an encouragement of Hindu orthodoxy, for the legal definition of Hinduism is so broad that few individuals are likely to have difficulty with this test other than those who explicitly convert to a non-Hindu religion. In the case of **Punjabrao V. Meshram**, the Supreme Court rejected the argument that Buddhists were included in the meaning of Hindu³⁸. The courts have upheld the inclusion of non-Hindus without reaching the broader question of religious discrimination. Nor have the courts addressed the factual question of the effect of conversion in dissipating the conditions that lead to be listed as Scheduled Castes.

Persistent legislative attempts to include the Buddhists, either by dropping the religious qualification or by specifying that 'Hindu be read to include them' have been unsuccessful – as has a recent attempt to extend the religious qualification to the Scheduled Tribes.

In examining the impact of the courts on the working of the policy of 'compensatory discrimination', the role of the courts in the process of designating the Scheduled Castes has been a very minor one. The search for a uniform criterion that could be employed throughout India to distinguish

untouchables from other Hindus proceeded without any assistance from the courts. Although Scheduled Castes were selected on the basis of the disabilities they suffered, the jurisprudence of disabilities was too spotty and too enmeshed with local variations³⁹. Although untouchables could be readily identified with the lower end of the Varna scale, the traditional jurisprudence of Varna standing was of little assistance in identifying the groups which were supposedly untouchable. Modern “untouchability” bore little correspondence to the Chandala category of classical law. In reference to determinations of customary rights, courts had sometimes employed Varna categories. Untouchables had sometimes, particularly in South India, has been referred to as a fifth Varna, below the Shudras⁴⁰. But in other places they were regarded as Shudras, albeit “unclean” ones⁴¹. For purposes of applying Hindu personal law, the courts had never attempted to distinguish untouchables from Shudras, all Hindus other than the twice-born were lumped together as Shudras⁴². Even where untouchables were popularly regarded as Shudras, they could not be equaled with them, since there were non-untouchable groups belonging to this category. Thus the tests used for distinguishing Sudras from the twice-born could not be used as a satisfactory measure of untouchability.

It might seem that identification of ‘untouchables’ groups would proceed from the definition of ‘untouchability’ in order to select those who suffer from it. The contemporary legal treatment of untouchability has derived from the listing of these groups (which in turn as chosen, with at least one eye to an ill defined notion of untouchability). The term ‘untouchability’ had no technical meaning before the constitution abolished it. The few judicial encounters with the concept have not succeeded in defining it in a way that would be useful in identifying untouchable groups.

The courts have indicated that untouchability does not include all instances in which a person is treated as ritually unclean and a source of pollution. It does not include such temporary and expiable states of pollution as those suffered by women at child birth, menstruating women, mourners persons with contagious diseases, persons who eat forbidden food or violate prescribed states of cleanliness. Nor does it include that “untouchability” which arises from incidents of personal history. Nor does it refer to situational or relative impurity, such as that between ordinary worshipper and priest or temple attendant. “It does not include every instance in which a person is stigmatized as unclean, polluting, or inferior because of his origin or membership in a particular group – i.e. where he is subjected to invidious treatment because of difference in religion or membership of a lower or different caste” ⁴³. The term ‘untouchability’ with which Article 17, is concerned is that which “refers to those regarded as untouchables in the course of historical development and which is related to the relegation of persons ‘beyond the pale of the caste system..... On the ground of birth in certain classes” ⁴⁴.

Thus, the word ‘untouchable’ is confined to disabilities imposed upon the groups commonly regarded as ‘untouchable’ . Its meaning is determined by reference to those who have traditionally been considered untouchables. But it is not always easier to define untouchables than to define untouchability. “Beyond the pale of caste system” is a misleading and unworkable formulation. Even the lowest castes are within the traditional system of reciprocal rights and duties. Their disabilities and prerogatives are articulated to those of other castes. Beside this Varna test is not also workable because it continues to crop up in discussions of untouchability. Thus the court have not still developed any learning an

untouchability that is suitable and could be employed in the criteria of selection of scheduled castes.

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6. RCSCST (1951), at pp. 10-11. (RCSCST = Reports of the Commissioner for SC and STs. These reports are designated by the period covered by the report rather than by the report number or by date of publication) at pp 10-11.
7. RCSCST 1957-58, I, 7. F. Ministry of Home Affairs 1956 :1.
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19. Public Employment (Requirement as to Residence) Act, 1957 (Act 44 of 1957).
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22. RCSCST 1951 : 8
23. Id., at 8-9.
24. Jyoti Bhushan V. Bodh Ram Muritram, 1974 M.P. L.J. 565.
25. Wasudeo V. Union of India, 1973 Mh. L.J. 994. Residence is equated with 'permanent abode' rather than place of origin or ancestral home (id., at 998).
26. Lalwani V. Collector, A.I.R. 1976 M.P. 44, 45.
27. RCSCST 1958-59 : I II.
28. Id.
29. Id., the Backward Classes commission had earlier recommended that migrating members should be treated as other Backward Classes (I : 155). In 1963 the Commissioner noted that the Government of India had still not taken decision on this issue, (1962-63 : I, 12).
30. Department of social security, 1965 : 13.
31. Lok Sabha Bill No. 119 of 1967, at p.7.
32. Wasudeo V. Union of India, 1973 Mh. L.J. 994.
33. The Government of India (Scheduled Castes) order , 1936, 53.

34. Thus Hutton's note to the Indian Franchise Committee Observes that it was decided to omit Christians and Muslims (Indian Franchise Committee 1932 : I, III).
35. For the composition of the legislative bodies under the Government of India Act, 1935, see the Ist and Vth Schedules to that act.
36. Constitution (Scheduled Castes) Order, 1950 .
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38. A.I.R. 1956 S.C. 1179.
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40. Sankaralinga Nadan V. Raja Rajeshwari Dorai, 35 Il.A.C. 176 (1908).
41. Atmaram V. King Emperor, A.I.R. 1924 Nag. 121.
42. Muthusami V. Masilmani, I.L.R. 33 Mod. 342 (1909); Manickam V. Poongavanammal, A.I.R. 1934 Mod. 323.
43. An attempt to attach this meaning by amending Article 17 to read 'no one shall, an account of his religion or caste be treated or regarded as 'untouchable', was defeated in the Constituent Assembly (C.A.D. Vol. VII 665, 669).
44. Devarajiah V. Padmanna, A.I.R. 1958 Mys. 84 at 85.

CHAPTER-III (B)
DR. AMBEDKAR'S CONTRIBUTION FOR THE UPLIFTMENT
AND REPRESENTATION OF THE SCHEDULED CASTES

Dr. B.R. Ambedkar, one of the illustrious son of India struggled for the upliftment of Scheduled Castes by carrying out a life long struggle to safeguard effectively the rights of Dalits. He wanted that his people should lead the life of dignity, meaning and self-respect. He tried his best to bring about a radical transformation in the living conditions of millions of his community who were condemned for many centuries to live degraded and dehumanised lives by performing the most defiling, dirty, impure and menial task. He also willed to guarantee the Dalits protection from the atrocities of the upper caste.

Mahatma Gandhi and Dr. B.R. Ambedkar were two important champions who fought bravely for the cause of Dalits in India. But both of them had different views in every aspect, right from the term to refer to the Scheduled Castes to the measures to be adopted for changing this status. Gandhiji coined and popularised a term, Harijan (Children/ men of God) to refer to Dalits, whereas Ambedkar preferred to call them "untouchables" which, in the latter's view, throws light on the actual situation. Gandhiji view untouchability from a religious perspective and according to him the problem of eradication of untouchability could be tackled through self introspection and change of heart of the upper castes. On the other hand, Ambedkar viewed the problem as a political and economic one, according to him untouchability is a product of the caste system by which the upper castes exploited the Dalits financially by extracting unpaid labour. He wanted a transformation at the social structural levels, in order to bring a change in the caste-biased discrimination. He also highlighted the role of

the state in bringing about societal change through legislative measures. Dr. Ambedkar initiated as the Chief Architect of the Indian Constitution that the numerous safeguards to the untouchables and other weaker sections were enshrined in the constitution.

Having born as an untouchable. Dr. Ambedkar suffered many social disabilities in his life inspite of his higher education. To realise his vision of a casteless society by liberating the Dalits from their centuries old enslavement and ostracism. He also advocated inter caste marriages and religious conversion. On Buddha Jayanti day in 1956, he embraced Buddhism along with five lakh followers from the Hindu fold. This marked the culmination of his frustation with the tenacity of Hinduism in rejecting the untouchables a comfortable niche in the Hindu Society.

(i) STATUS OF SCHEDULED CASTES :

The Scheduled Caste are not at the lowest group in the Hindu caste system. Their conditions has not undergone any significant change even after the four decades of political independence. Of course, there were several Reform Movements before independence, various constitutional safeguards, Dalit bodies and voluntary agencies which have highlighted the problem of these groups with out much fruits. The constitutional safeguards only helped to create a class among these very sections, they have not yielded any change in respect to others who continue to be exploited deprived and depressed in all aspects of life.

The upward mobility of the Scheduled Castes is not always smooth or easy. This is due to the conflicting demands of status and power while large sections of Dalits remains untouched and unchanged, those little sections which moved up the scale of mobility in spheres other than caste are increasingly facing many problems of adjustment, strains and counteractions by the rest of the society in various forms of threat,

coercion, humiliation, torture, rape and other kind of violence. The Scheduled Castes who were also called Harijans constitute an important stratum not because they form 15 percent of India's population but they occupy a unique position as untouchables. The economic position relating to landholdings further high light the differences. While 82.8% of land is owned by other communities, the SC's possess only 7%. Of them nearly 70% have less than one hectare. In employment, the quotas of higher posts for them are rarely filled. Most often posts meant for SC's are deserved and filled by others for want of suitably qualified candidates.

The remarks of the commissioner of Scheduled Castes and Scheduled Tribes, a constitutionally appointed authority to monitor the working of the safeguards for the SC's and ST's reported over a decade ago are most appropriate. But still willing smile on many a hamlet and slum of the SC's is yet to be bestowed. They continue to submit to the decree of fate rather than have the benefits of the decrees of our basic laws. Liberty, equality and fraternity so richly enshrined in the constitution of our country have still to acquire a meaningful preposition for them.... There are many areas where the SC's are denied even common sources of drinking water.”¹ Today despite of declaration of Article 17 of the constitution which prohibits untouchability and its practice very little changes has taken place and the conditions of Dalits remains in their previous positions.

The condition of the Dalits in the rural area is worst. Untouchability is still practiced there. They continue to live separately from the village. In the public functions, festivals and ceremonies, they are usually kept at a distance. The untouchables are given tea in mud cups whereas others are given in tumblers. They are made to sit in corner, away from those of other castes. The converted Harijan Christians also suffer many humiliations just as their ex-counterpart.

The constitution of India of course made untouchability a panel offence. But the law is seldom used. Even when used the police and other authorities ensures that no convictions take place. Beside this, the atrocities on the Scheduled Castes have gone up so sharply and continuously that the Government has been forced to enact a new sharp law providing for more stringent punishments and effective implementation of safeguards by penalizing officers who act with indifference.

(ii) AMBEDKAR'S THOUGHT IN BACKWARD CLASSES :

The backward classes form a major potion of the Hindu Society. According to Mandal Commission Report they form 52.10% of the total population. Of the total Backward Classes population 43.70% were Hindus and 8.40% were the non-Hindus. In addition to the Backward classes population, the Scheduled Castes were 15.05% and the Scheduled Tribes were 7.51% of the total population. Total of these categories would be 22.56% of the total. Thus, the Backward Classes 52.10% plus Scheduled Castes and Scheduled Tribes 22.56% would be 74.66% of the total population. The backward classes are nothing but a collection of certain castes which are socially and educationally backward. In the Hindu religious order they are called Shudras and treated as lower among the "Chaturvarna"².

Dr. B.R. Ambedkar had great sympathy for these backward classes. The Manusmiriti has maliciously imposed several in human penalaties and indignities on them³. Therefore they remained backward in all respects. His vision of an integrated society based on liberty, equality and fraternity makes him to think for them and to strive to improve their condition.

Mahatma Phule (1827-1890), the first real social reformer, who belong to Shudra Caste, tried his best to improve the condition of Dalits by bringing to them socio-political awareness. Dr. Babasaheb Ambedkar regarded him as one of the three preceptors. Dr. Baba Sahedb Ambedkar wrote a treatise on the Shudras in 1946, under the caption of “who were the Shudras?”. He very categorically states that the shudras of the Indo-Aryan society are absolutely indifferent in race from the Shudras of the Hindu Society. The Shudras of the Hindu Society are not the racial descendents of the Indo-Aryans society. The word Shudra, as used in the Hindu society, is not a proper name at all. It is an epithet for a low uncultured class of people. It is a general cognomen of a miscellaneous and heterogenous collection of tribes and groups, who have nothing in common except they happen to be on a lower plane of culture. It is wrong to call them by the name Shudras. They have very little to do with their namesakes of the Aryan society, who had offended the Brahmins. It is a pity that these innocent and backward people of later days have been rolled up with the original Shudras and subjected to the same penalties for which they had given no cause ⁴. According, the Shudras among the Indo-Aryan community and Shudra castes among the Hindu society come under the blanket nomenclature of backward classes.

Under the constitution of India, the credit of framing of which goes to Dr. Ambedkar, the backward classes are those which are necessarily socially and educationally backward⁵. Accordingly, the backward classes are those lower caste Hindus as well as the groups under other religions which are socially and educationally backward as compared to forward classes.

The Backward classes were subjected to indignities and social distance in accordance with the code of Manu. The Manusmiti very

ruthlessly imposed several restrictions, prohibitions and discriminations on the Shudras. However, the Shudras could not raise their protest against those prohibitions as they were presumably sanctioned by the religion⁶. Moreover, they lacked education. He said that "The Executive and Administration is entirely monopolised by higher classes. They are monopolising it by reason of the fact that they have been able to get the highest education. The Backward Class man's son cannot get even the primary education⁷."

In order to uplift the backward classes to the level of high castes he proposed in the manifesto of the Independent party labour founded by himself that the economic conditions of the farmers and the labourers would be improved by nationalising the big industries, by liberating the agricultural tenants from the clutches of the land lords by increasing employment opportunities, by financing promising entrepreneurs; by implementing the scheme of free and compulsory education etc.⁸. When Dr. Ambedkar became Labour Minister in the Viceroy's Executive Council he undertook several schemes for the welfare of the labourers.

It should be borne in mind that he advised the backward classes to "forge a united front" with the Scheduled Castes "in order to wrest political power from the higher classes"⁹. He very categorically said, "the scheduled castes and backward classes form majority of the population of the country. There is no reason why they should not rule this country. All that is necessary is to organise for purpose of capturing political power which is your own"¹⁰. Dr. Ambedkar very rightly thought that they need only unity of purpose and sufficient courage to strive for power. Thus he proposed political solution to the socio-economic problem of both the classes.

He was also aware of the fact that 'The Backward Classes did not like to associate themselves with the Scheduled Castes because they were

afraid that such an association will bring themselves down to the level of the scheduled castes¹¹.

Various provisions are made in the constitution to safeguard the interest of backward classes. The constitution however provide various safeguards for Backward classes in Article 15(4), 16(4), 19(1)(g), 46, 340(1), 340(2) etc. which are discussed in detail in coming chapters. Thus the constitution sincerely contemplates to improve the condition of the Backward Classes. Thus Baba Saheb Ambedkar genuinely tried to raise the socio-economic condition of the Backward Classes in India. However it seems that no due cognizance of his effort has been taken by the concerned. The Backward Classes need to follow him for their own improvement and integrity of the society as a whole.

(iii) AMBEDKAR'S THOUGHT ON REPRESENTATION OF SCHEDULED CASTES:

Dr. Baba Saheb Ambedkar, however put forth his demand of separate electorate for the Depressed Classes firstly in 1919 while giving evidence before the South Borough Franchise Committee¹². In his report submitted to the Simon Commission in 1929, he recommended for adult franchise, and joint-electorates with reserved seats for almost all the communities except the Europeans. While giving evidence before the Simon Commission in 1928, he replied to a question, "if there is no adult franchise ?" saying that, " then we would ask for separate electorate" ¹³. During first and second Round table conferences Baba Saheb Ambedkar demanded separate electorates for the Depressed Classes. The British Government, however conceded the demand of separate electorate under the coomunal award, but due to antajonistic attitude of Mahatma Gandhi in that respect, he had to relinquish it and accept joint electorates with reserved seats under the Poona Pact 1932.

The obvious purpose of the separate electorate is to secure adequate and effective representation to a minority in order to thwart any probable attempt to impose tyranny by communal majority over the communal minority. Dr. B.R. Ambedkar also thought that the best method of securing true representation of Dalits is the demand for separate electorate in order to protect their interests. Dr. Ambedkar demanded separate electorate because he thought that the problem of the Depressed Classes was the problem of one-fifth of the total population of India. They form 'a group' by themselves which was distinct and separate from the Muslims and Hindus. They suffer from untouchability and invidious discriminations based on it. They are politically suppressed, socially oppressed, economically exploited and religiously degraded. He thought that they were more suppressed than the serfs and slaves.

Dr. Ambedkar visualised the problem of Depressed Classes from the political point of view since the very beginning. According to him the problem of the Depressed Classes was "eminently political problem and must be treated as such"¹⁴. His distinctive and unique approach made him think that 'the problem of the Depressed Classes will never be solved unless they get political power in their own hands'¹⁵.

Dr. Ambedkar lost all his hopes when he saw that the British Government was having indifferent attitude towards the problem of Dalits. He very boldly said in the Round Table Conference that, 'No share of this political power can evidently come to us as long as the British Government remains as it is'¹⁶. It is only in 'Swaraj' these groups might be able to protect their interests. He however thought that political power would be possible to them only through their real representatives, as they would be real only when they are elected by the Depressed Classes themselves through separate electorate.

Dr. Ambedkar observed that the Depressed Classes from minority for ever which is based on birth. Moreover in the Hindu Social system their status is low and despicable. There are various communities in India which require political recognition, it has to be understood that minorities are not on the same plane, that they differ from each other in the social standing which each minority occupies, vis-à-vis the majority community”¹⁷. The economic condition of the Depressed Classes is vulnerable. They for petty reason suffer the agony of social boycott. The Hindus do not treat them equally. Hence he very explicitly said that that “we have been called Hindus for political purposes, but we have never been acknowledged socially by the Hindus as their brethren”¹⁸.

At the time when Baba Saheb Ambedkar was pleading the case for separate electorate at the Round Table Conferences, the franchise was very much restricted. Possession of landed property or huge income being necessary qualification for becoming a voter, the Depressed Classes were naturally deprived of being voters. They could not contest the elections. On the other hand the great disqualification they had was of untouchability. Therefore if somebody was qualified to contest the election, it was impossible for him to get elected. Therefore there was no other alternative except to demand, separate electorate for Depressed Classes. Dr. Ambedkar thought that their past continues in the present and it may continue in future also. Therefore he very correctly thought that “instead of their leaving the untouchables to the mercy of higher castes, the wiser policy would be to give power to the untouchables themselves who are anxious, not like others, to usurp power but only to assert their natural place in the society”¹⁹.

Ultimately Dr. Baba Saheb Ambedkar demanded, inter alia separate electorate for the depressed classes through a memorandum submitted to the Round Table Conference jointly by himself and R.B.R. Srinivasan. The

main purpose of Dr. Baba Saheb Ambedkar in demanding separate electorate to the Depressed Classes was “to destroy monopoly in every shape and form” enjoyed by the so called high castes. “our aim is, he stated “to realise in practice our ideal of one man one value in all walks of life, political, economic and social. It is because representative government is one means to that end that the Depressed Classes attach to it as great a value and it is because of its value to us that I have urged upon you the necessity of making your declaration subject to its fulfilment²⁰.

In order to foil the efforts of Dr. Baba Saheb Ambedkar in demanding separate electorate, Gandhiji played some foul tactics. He argued that almost all the delegates to the Round Table Conference was not elected by the parties or groups whom they were to represent ; but they were nominated by the government²¹. Hence they were not properly authorised by their respective parties. On the other hand, he argued that “The Congress claims to represent the whole nation.” ²². Thus he vainly tried to demoralise all the delegates and tried to create an impression that only congress delegates represent the whole nation. Dr. B.R. Ambedkar, however ably said, ‘I am a nominee or not, I fully,claims of my community” ²³. Regarding the claim of congress to be representative of whole nation, he said that, ‘I can only say that it is one of the false claims which irresponsible people keep on makings although the persons concerned with regard to those claims have been invariably denying them ²⁴. The British Government neglected the argument of Gandhiji and continued the proceedings of the Round Table Conference uninterrupted. It was Gandhiji’s conviction that Depressed Classes do not need political rights at all, what is most important is that they need protection from social and religious prosecution ²⁵. In the words of Dr. Ambedkar, ‘Mr. Gandhi

planned to buy out the Musalmans by giving to the Musalmans their 14 demands, which Mr. Gandhi was not in the beginning prepared to agree. When Mr. Gandhi found that Musalmans were lending their support to the untouchables he agreed to them their 14-points on condition that withdrew their support from the untouchables²⁶. However, due to non-cooperation of Muslims the plan of Mahatma Gandhi failed. On 8th October 1931. He further met Agha Khan and asked the Muslim leader to withdraw their support to the Depressed Classes, but in vain²⁷.

When the British Government realised that there was no compromise on the majority problem, he asked all the members of minorities committee to authorise him to settle the problem at his own. Mahatma Gandhi signed the pledge to agree with the Premier²⁸. Dr. Ambedkar however did not sign the pledge as he believe in the justice of his demands. Mahatma Gandhi began his epic fast unto death in Yewade Jail, Pune on 20th September, 1932 in protest against the separate electorate for the Depressed Classes provided under the communal award. The political situation in the country became grim and tense. Dr. Ambedkar categorically said that, "I shall not deter from my pious duty, and betray the just and legitimate interests of my people even if you hang me on the nearest lamp-post in the street"²⁹.

Eventually, Sir Tej Bahadur evolved a scheme of Primary and Secondary elections for the reserved seats in place of separate electorate. Dr. Ambedkar however expressed his willingness to accepted the proposal provided the number of seats was increased. It was acceptable to the Hindu leaders. In the negotiations the Hindu leaders accepted to allot 148 seats to the Depressed Classes in the Provincial Assemblies. In the central legislatures 18% of the seats allotted to the general electorate were to be reserved for them. Gandhiji consented to the agreement. The agreement was signed on 24th September, 1932 at Poona, as such it is known as 'Poona

Pact'. Dr. Baba Saheb Ambedkar has rightly observed that "Poona Pact has completely disfranchised the Scheduled Castes"³⁰. Mahatma Gandhi and the Hindu leaders agreed to joint electorate only because it was to serve their interests in a better way. They must have thought that they would be able to impose Hinducracy on the Scheduled Castes, that too with the easy consent of the 'Stooges' of their community. Dr. Ambedkar was fully aware of this fact, so he tried his best for separate electorate for the scheduled castes since 1919 itself. He was fully aware of the inter-relationship between separate electorate, representation, political power and welfare of the Scheduled Castes. He said very categorically that Poona Pact was 'fraught with mischief'. It was accepted because of the coercive fast of Mr. Gandhi and also assurance was given at the time that Hindus will not interfere in the election of the scheduled castes³¹.

When his party was fully routed in the elections held in 1946, he prepared a memorandum on behalf of the Scheduled Castes Federation to be submitted to the Constituent Assembly, later on published under the caption of 'States and Minorities' where he vehemently demanded separate electorate.

Later Dr. B.R. Ambedkar was elected as Chairman of the Drafting Committee of the Constituent Assembly on 29 August, 1947. He, however, could not raise the issue of separate electorate in the Constituent Assembly because by raising this issue some distressing implications would arise. Therefore Ambedkar who believed in the politics of power, principle and possibility in a given situation kept strategic silence over the matter.

Ultimately, Baba Saheb Ambedkar became successful in his fight for securing human rights for the scheduled castes. The constitution, the credit of framing of which is graciously given to him, is the monumental evidence to this fact. The main provisions under the constitution of India in respect

of the welfare of the Scheduled Castes are given in Articles 15(4), 16(4), 46, 164, 330(1) and 338(1) which are discussed in detail in coming chapters.

Thus Dr. Ambedkar demanded separate electorate as the best method of securing adequate and effective representation of the Scheduled Castes in the legislature. He contemplated that by this way the Scheduled Castes would have got able leadership which could have tried selflessly to uplift their brethren and integrate them with the main stream. However due to strong opposition based on misunderstanding of the fact, he had to reluctantly withdraw his demand and accept joint electorate with reserved seats. This agreement is known as 'Poona Pact' and it went down in history as an important document of the Constitutional evolution of India. It seems that the Constituent Assembly also directly or indirectly agreed to be bound by the Poona Pact, 1932 and provided the same system of joint electorates with reserved seats and certain special safeguards for the welfare of the Scheduled Castes.

However during the first few years of working of the constitution he found that the representatives of the Scheduled Castes did not prove to be good in protecting the interests of their brethren. The Congress naturally nominated such Scheduled Castes on the reserved seats who were loyal to the party rather than to their brethren; and got them elected on the strength of caste majority. Though, the Government, as he said, was different towards the problem of the Scheduled Castes, their representatives, by and large were meak on their own problem. Therefore the working committee of the Scheduled Castes Federation under the leadership of B.R. Ambedkar passed the resolution, on 27th August, 1955, in favour of abolition of reservation of seats for Scheduled Castes in the Central and State legislatures³².

Thus Dr. B.R. Ambedkar was very keenly interested in the adequate and effective representation of the Scheduled Castes, no matter by which way. He, however, thought that such representation must be able to protect the interest of the Scheduled Castes as a part of the society as a whole.

(iv) DR. AMBEDKAR AS AN EMANCIPATOR OF THE SCHEDULED CASTES:

Dr. Ambedkar had liberated the Scheduled Castes who were subjected to invidious discrimination on the ground of untouchability for centuries together. Untouchability was deeply rooted in the Hindu Society and due to this untouchables were treated like chattels. It was none but Dr. Ambedkar who rightly diagnosed the problems of Scheduled Castes and successfully solved it.

The type of strategy which Baba Saheb Ambedkar had applied for the emancipation of the Scheduled Castes who formed a significant majority in our country. His mission, however, was to emancipate the so called untouchables from political persecution, social suppression, religious repression, economic exploitation and cultural degradation perpetrated by the Brahminism. His love and concern for his brethren was the result of his motto to uplift them to the level of so called upper castes and integrate with them once for all. He was determined to liberate the untouchables as an integral part of the liberation of the nation as a whole.

His diagnosis of the problem of the Scheduled Caste was unique and exact. He emphatically told "that the problem of the depressed classes is a social problem and that its solution lies elsewhere than in politics. We take strong exception to this view. We told that the problem of the depressed classes will never be solved unless they get political power in their own

hands. According to him untouchability was the outcome of hatred, jealousy and contempt for the Buddhists and it was a deliberate malicious act connived by the Brahmins in order to suppress the former for imposing the latter's supremacy over all the people including Buddhists. Many contemporary leaders among the touchables and untouchable tried to find the solution in social reforms and moral appeal to the Hindus. But Baba Saheb's diagnosis was more accurate, touching to the truth and utilitarian in producing better results.

Primarily Dr. Ambedkar tried his best to prepare the tradition bound untouchable's mind psychologically more receptive to new thoughts in his paper 'Mook Nayak', Dr. Ambedkar in the very first issue wrote that "India is the home of inequality". "In order to save the depressed classed from perpetual slavery, poverty and ignorance, Herculean efforts must be made"³⁴. He gave the slogan in order to awaken the untouchables. "Tell the slave he is a slave and he will revolt"³⁵. Then he launched the famous Mahad Satyagraha in 1927 and Kalaram Temple entry Satyagraha in 1930. He vigorously exhorted that 'the real remedy is to destroy the belief in the sanctity of the Shastras'³⁶ for destroying the Hindu social structure which was responsible for ruining of the Depressed Classes. Although he could not be successful in those Satyagrahas, he could create "dissatisfaction" amongst the Scheduled Castes, against Hinduism, and he "disillusioned untouchables" hope that they could get rid of their disabilities with the frame work of Hinduism³⁷.

Before his advent, the untouchables were groping in the dark having no idea of their future. He made them aware that their future lies in politics. They should leave 'aloofness' exercise unfailingly their voting rights, act as balance of power and win power. He was also fully knowing that 'in a Swaraj Constitution that we stand any chance of getting the political power

into our own hands, without which we cannot bring salvation to our peoples³⁸.

Dr. Ambedkar was of the opinion that the principles of “self help” and ‘self respect’ should be observed in the real spirit. He said that, you must rely on your own strength, shake off the notion that you in any way inferior to any community”³⁹. He categorically said that, ‘the sooner you remove the foolish belief that your meseries were preordained, then better. The thought “that your poverty is an inevitably, and is inborn and inseparable is entirely erroneous. Abandon this line of thought of considering yourselves to be slaves”⁴⁰.

Dr. Ambedkar established ‘Bahishkrit HitKarini Sabha’ on March 9, 1924 in order to promote the spread of education among the Depressed Classes by opening hostels or by employing such other means⁴¹. He established the “Depressed Classes Education Society”⁴² to organise the School Education of his community on June 14, 1928. He also founded the People Education Society which has been working for the spread of education amongst the weaker sections since 1946. He asked them to ‘educate, agitate and organize’ for getting their fundamental rights. He has categorically stated that the untouchables would not get anything by begging. They have to manifest their strength and vigour⁴³.

While trying to raise the level of receptivity of the depressed classes, he tried simultaneously to make the mind of Hindus more responsive to the new awakening. He tried to disclose the hollowness of their Shastras and religion. His attacks were rational but piercing. He attempted to awaken them through Satyagrahs which were launched at Mahad (1927) and Nasik (1930). He said that his community wants social and religious equality and tried to persuade them to adopt a righteous course for their neglected and deprived brothers. While awakening them he said explicitly that “this

religion and this social order has ruined us". But this is not going to stop here. This would ruin the Hindus themselves and ultimately India ⁴⁴.

When Dr. Ambedkar did not get healthy response from the caste Hindus to his persuasive tactics, he threatened to convert to other religion as early as 1929 in a conference held at Jalgaon ⁴⁵. Again in 25th September 1932 he reminded of "a great danger of their succeeding from Hindu Society". "I beg to you to bear that in mind and hope that you will do the needful in the matter" ⁴⁶. He again reiterated in the conference at Yeola on October 13, 1935, that "I solemnly assure you that I will not die a Hindu" ⁴⁷. Seeing his work even Mahatma Gandhi had to admit that, Dr. Ambedkar is not the man to allow himself to be forgotten..... Dr. Ambedkar is a challenge to Hinduism ⁴⁸.

Slowly and gradually Mahatma Gandhi was successful in establishing Harijan Sevak Sangh in 1932 to serve the course of the untouchables. One Sri Ranga Iyer presented the untouchability Bill in 1933 in the Central Legislature but in vain. Beside this Anti untouchability Acts were passed by several Provinces and states during 1934 to 1946. This shows that the Baba Saheb's strategy became useful to a greater extent.

Apart from all this he tried to build up a strong organisation of the Scheduled Castes. Dr. Ambedkar said that, "we cannot have any position in the politics of the country if we do not have a strong organisation" ⁴⁹. He viewed strong organisation as a instrument of acquiring political power. As a result he formed Bahishkrit Hitkarini Sabha in 1924. Independent Labour Party in 1936, Scheduled Castes Federation in 1942. The organisations formed by Dr. Ambedkar served as a training centre of politics for the Scheduled Castes. Apart from political activities they had to work for social reforms also. Through these organisations the Scheduled Castes were able

to maintain their self-identity and emerge as a third political force to be reckoned with in the politics of India.

Dr. Ambedkar's whole life was full of confrontation, conciliation and cooperation. A close look at his life mission reveals that whenever the welfare of the Scheduled Castes was at stake he was constrained to confront and the confrontation was to eventually culminate into conciliation and cooperation in the wider interests of nation. Therefore he signed the Poona Pact showing his community's interest could be honourably adjusted with national interests. He could operate then during 1942 to 1946 as the Labour Member in the Viceroy's Executive Council and during 1946 to 1952 as a member and Chairman of the Constituent Assembly and as a Law Minister respectively.

In the politics of emancipation of the Scheduled Castes he adhered to the principle, 'Politics is not a game of realising the ideal. Politics is the game of possible'⁵⁰. Although he wanted to get separate electorate for the Scheduled Castes, he had to be contended with joint electorate. Although he wanted reservations to continue till the complete eradication of untouchability, he accepted it up to ten years only in the Constituent Assembly. He said to the caste Hindus that, "the responsibility is entirely yours. You must make your effort to uproot caste, if not in my way then in your way"⁵¹. His attitude was to mould the public opinion if it is adverse, but not to oppose it outrightly in defiance of democratic principle.

Dr. Ambedkar tried to maintain separate identity for the Scheduled Castes for safeguarding their political interest. He said that, 'Where ever I may be, in whatever company. I may find myself, I would never loose my separate identity. If any body asks for my cooperation. I would gladly give it for a worthy cause. I cooperated with the Congress Government for four years with all my might, and with all the sincerity in the service of my

motherland. But during all these years I did not allow myself to merge into the Congress Organisation ⁵². The problem of the Scheduled Castes was specifically identifiable as distinct problem from other weaker section of the society as the former were suffering from social as well as economic inequality whereas the latter were suffering from mere economic inequality. He could not make the common cause with others. Therefore it was reasonable on the part of Baba Saheb Ambedkar to maintain separate identity of the Scheduled Castes. While maintaining separate identity of the Scheduled Castes he did not find any racial difference between touchables and untouchables. His main aim and strategy was to maintain a separate identity of the Scheduled Castes without damaging the integrity of the nation. On the contrary, Mahatma Gandhi's assertion that the Scheduled Castes were inseparable parts of Hindu Society was fallacious one. Baba Saheb Ambedkar's defeat in the elections of 1952 and 1954 could be attributed to the caste minded separatist mentality of the majority caste Hindus. His defeat in a way has disproved the Gandhian theory of unity of then Scheduled Castes and caste Hindus even by his own caste men. Baba Saheb's stand in this respect was of course, right.

Dr. Baba Saheb Ambedkar had shown an unflinching courage and intellectual power when he eloquently spoke before the Round Table Conference (1930-32) on the problem of Scheduled castes and its solution. The mighty British Government accepted the separate electorate with reserved seats for the scheduled caste. He asked before the British that "We were in the loath some condition due to our untouchability and the government has done nothing to improve their conditions. He concluded that "only in swaraj constitution that we stand any chance of getting the political power into our hands with out with we cannot spare the towering

personalities of those days like Mahatma Gandhi, Barrister Jinnah, Pandit Nehru and many others .

He was cleaver enough to understand the probable foul tactics of splitting the Brahminic of Scheduled casts community by the Brahminic forces on the ground of ideological or cast or sub caste ground . He warned the community that “The Scheduled castes people should guard against being split by congress. At the same time you should not become complacent. You should ever remain vigilant ⁵⁴ .

Dr. Ambedkar denounced and discarded the prevailing old Hindu minded leadership amongst the Scheduled Castes and gave rise to the new one. He was expedient enough to bonfire the Manu Smriti as a matter of strategy at the hands of S.G. Sahatrabuddha, a Brahmin liberal on 25th December, 1927 at Mahad. He was a pragmatic political thinker having faith in constitutional means. Therefore his leadership was dynamic and his suspension of the struggle for Mahar Watan Bill due to possibility of violence, his discarding Satyagraha as a means to get social justice, his acceptance of joint electorate in place of separate electorate, his declaration of conversion and its postponement for more than 20 years, his criticism on and cooperation with the congress, his views on linguistic states, and the policy of reservations etc. exemplify the dynamic and pragmatic nature of his leadership.

Whenever Dr. Ambedkar got any opportunity, his strategy was to exploit it for the betterment of the Scheduled Castes. When he became Labour Member in the Viceroy’s Executive Committee, he got the sanction of Scholarship and reservation in the services for the Scheduled Castes. He made use of slogans like “I have no Motherland” ‘, I am born as a Hindu, But will not die as a Hindu” , Dynamite the Shastras” , I will make India Buddhist country”. These very slogans exerted same influence over the

caste Hindus. Thus he adopted “shock technic” to cure the illness of Hindu Society.

He tried to put the problem of Scheduled Castes before the world community so as to arouse and attract their conscience favourably. He put the problem of the “castes in India” before the Anthropology Seminar at Columbia University, New York as early as 1916. He represented the Scheduled Castes at the Round Table Conferences held at London during 1930-32 and successfully argued for the political rights of the Scheduled Castes. He wrote a paper on the problem of the scheduled castes in response to the invitation by the Pacific Relations Committee for its conference in December 1942. This paper was later on published in book form under the caption “Mr. Gandhi and the Emancipation of the Untouchables”. He was of the opinion that the problem of untouchability was a problem before the humanity at large. He states that, “the socio-religious disabilities have dehumanised the untouchables and their interests at stake are therefore the interests of humanity”⁵⁵.

Dr. Baba Saheb Ambedkar had resorted to legal measure for the abolition of untouchability and protection of the socio-political and economic interests of the Scheduled Castes. His work on the floor of the Bombay Legislative Council during 1937-39, his role as the Labour Member in the Viceroy’s Executive Council and his role as the Chairman of the Drafting Committee of the Constitution in the Constituent Assembly and as a Union Law Minister and as a Member of Rajya Sabha reveal his faith in legal measures. He was of the opinion that, the Depressed Classes “will get no share of power unless the political machinery for the new Constitution is of a special make. In order to secure the rights and interests of the Scheduled Castes under the Constitution, he submitted a Memorandum, published as “State and Minorities” to the Constituent

Assembly. In this Memorandum he expressed his views as to how the nature and structure of the future constitution should be for securing socio and economic justice. Thus he thought that statutory provisions are necessary as a 'guarantee' to secure the rights of the minority like scheduled caste ⁵⁶.

Dr. Ambedkar adopted Buddhism with his brethren on October 14, 1956 at Nagpur. He has shown his courage, conviction and rational attitude in the choice of Buddhism. He wanted to embrace that religion which would satisfy same tests of good religion; viz. It should be based on liberty, equality and fraternity, it should be able to accept the challenge of modern science and communism; it should be based on pure rationalism and it should not sanctify or ennoble poverty. According to his Buddhism would satisfy all those tests, Moreover it was Indian religion which is spread in other Asian Countries also. According to Bhagwan Das his "adoption of Buddhism was not a political stunt. It was an inner urge in search of a way" ⁵⁷.

Conclusively speaking Dr. Baba Saheb Ambedkar was primarily meant for the emancipation of the scheduled castes from the age old bondage of untouchability imposed by Brahminism. His adopted brilliant strategy. His mission was based as certain principles and high moral values. Although he was a vociferous critic of Hindu society infested with many evils, his criticisms were always constructive and reformative in nature. While serving the cause of his brethren he had not done any disservice to the nation. He tried to reconcile both the interests very nicely. There lies his skill, strategy, ability and integrity by which he was able to solve the problem of the Depressed Classes to a greater extent.

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CHAPTER IV

CHAPTER-IV(A)

RESERVATION POLICY (EXPLAINED)

The package of the 'Reservation' aims at removing the socio-legal disabilities of certain specified group in order to facilitate their equal participation in the national main stream and to protect them against social , injustice and exploitation .It intends to bring unequal at the level of equals in order to achieve the constitutional mandate of egalitarian society Reservation policy is meant for correcting injustice But, these very objective could not be achieved after the lapse of four decades even today the oppressed sections of our society are where they were five centuries ago . the reason for this that the fruits of reservation are by and large monopolised by the elite.

The constitution makers visualised that social justice should be done to scheduled cast and scheduled tribes by reservation for number of years and simultaneously effort are made to uplift these classes so that they could compete with other on equal terms. But we have failed to achieve our goals because of electoral politics. Therefore it is necessary to make 'reservation policy' a permanent and to extend it to those who really deserve it.

Reservation is one of the mechanisms of protective discrimination, as the social policy of the state enshrined in the constitution to ensure the participation of the traditionally neglected section of the society . It involves fixation of quotas in Legislative Bodies , in Educational Institutions and in Public Employments.

(i) CONCEPT OF RESERVATION IN BRITISH INDIA.

Before coming of the constitution of India , the policy of the British Government was to make commonly representation in Service upto 12-1/2% of the vacancies in open competition in favour of candidates

belonging to certain communities which were considered as backward and weaker section of the society . Reservation were made in services for Anglo Indians . The framers of the constitution of India reviewed their policy in the light of relevant provisions which lay down certain exceptions that no discrimination be made in the matter of appointments to the services under the state on grounds of race, religion, caste etc. These provisions are made for scheduled castes and scheduled tribes in all services and for Anglo-Indians in those services in which they had special reservations on the 14th August, 1947. At the census 1951, the Government of India decided to make following reservations in the recruitment to posts and services under them. A resolution Number 42/21/41 was adapted by the Ministry of Home Affairs on September 13, 1950. The Ministry recognised the following reservations:

(a) SCHEDULED CASTES:

The existing reservation of 12 ½ % of vacancies filled by direct recruitment in favour of scheduled caste will continue in the case of recruitment of posts and services made an All India basis, by open competition. Where the recruitment is made otherwise than by competition, the reservation for Scheduled Castes will be 16 - 2/3 % as at present.

(b) SCHEDULED TRIBES:

Both recruitment by open competition and in recruitment made otherwise than by open competition there will be a reservation in favour of members of scheduled tribes at 5% of the vacancies filled by direct recruitment.

(c) ANGLO INDIANS:

The reservations which were in force in favour of Anglo Indians in the Railway Services, the posts and Telegraphs

Department and the Customs Department etc. on 14th August, 1947, will be continued subject to the provisions of Articles 336 of the Constitution.

The above reservations were applied in the case of recruitment made on an All Indian basis under the Constitution all citizens of India are eligible for appointment to posts and services under the central government irrespective of their domicile of place of birth and there can be no recruitment to any central service which is confined by the rule to inhabitants in the specified area. In many cases the percentages of reservations for scheduled castes and scheduled tribes was fixed by the Government taking into account the percentage of the scheduled castes and scheduled tribes in the area.

(ii) RESERVATION POLICY AND SCHEDULED CASTES:

The government of India adopted reservation policy after independence to safeguard through constitutional measures the interest of certain deprived groups known as Scheduled Castes, ex-untouchables, Harijans or Avarnas. This policy is called protective discrimination, positive discrimination and affirmative discrimination. This has recently become a subject of serious criticism and the various castes group protested it. The criticism is due to the ineffectiveness of the policy in raising the social and economic status of Scheduled Castes. This gave rise to the elitist groups within the scheduled castes and this increased inter caste conflicts in various regions of the country. This criticism was due to the diverse economic and political interest. Some critics were not at all in favour of continuing this policy. They demanded the complete removal of this policy, whereas others stress on changing the criterion of reservation from caste to economic backwardness so that it does not effect the efficiency of work and does not create social tension.

The Constitution makers visualised that social justice should be done to scheduled caste and scheduled tribes for number of years and simultaneously efforts are being made in order to uplift these very classes so that they could complete with other an equal terms. But inspite of our best efforts. We have failed to achieve our target. We have no alternate due to reason of electoral politics. But we should try our best to make reservation a permanent feature and to extend them.

The purely electoral motives of the government is proved by the fact that the reports which forms the basis of their decisions were lying among the dead files and were re-asserted only a few week before either general election, Assembly elections or major by elections.

The caste based reservations had been supported by the policy makers because of the historical deprivations faced by the Scheduled Castes who were at the bottom of social hierarchy. They were characterised by the convergence of multiple marginalities and cumulative inequalities by the upper castes.

(iii) RESERVATION FOR ECONOMIC UPLIFTMENT:

Economically the poorest of the poor are those who engaged themselves in unremunerative and after degrading occupations. These include landless bonded agricultural labourers or marginal share croppers. Socially they are unprivileged because they were not allowed to adopt the cultural and religious values of upper castes due to social sanctions. Any attempt of the scheduled caste to violate the social norms to change the style of life and to assert for their civil right was asserted and resented by the upper castes. They were not even allowed to wear the clothes and jewellery which the high caste worn. For the improvement of their status, they take shelter under the British system of justice which was based on the principle of equality before law. But this system was also inclined

towards caste Hindu. Thus the lower and exploited conditions of these groups emanate from cumulative inequalities in economic, political and ritual systems. A few legislative measures were adopted by the British Government but no concerted move worth the name was made on a large scale to eradicate this evil from our midst.

The target of social justice can be achieved by bringing social inequality in the society. The deprivation is considered to be the product of the distorted economic management. There fore a change in the property, relations is advocated as the cure of social malady. This change is only possible by a revolution, the society should be prepared and wait for the outcome.

There are various provisions in the constitution of India which forms the part of the economic safeguards. Article 23 prohibits traffic in human beings and beggar and other similar forms of forced labour and provides that any contravention of this provision shall be an offence punishable in accordance with the law. It does not specifically mention SC & ST but since the majority of bonded labourers belong to SC & ST this article has a special significance for SC & ST. In pursuance of this article there is the Bonded Labour (Abolition) Act, 1976, and there is a centrally sponsored scheme for identification, liberation and rehabilitation of Bonded Labour. Article 24 provides that no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment. There are central and state laws to prevent child labour. This article too is significant for SC & ST as a substantial portion, if not the majority, of child labour engaged in hazardous employment belong to SC & ST.

Beside this there are other specific safeguards for SC's and ST's Article 244 (1) the provisions of the Fifth Schedule shall apply to the

administration and control of the Scheduled Areas and Scheduled Tribes in any state other than the states of Assam, Meghalaya, Mizoram and Tripura. Clause 2 of Article 244 provides for the provisions of the sixth Schedule which shall apply to the administration of the tribal areas in the states of Assam, Meghalaya, Mizoram and Tripura.

Article 275(1) provides that ‘there shall be paid out of the consolidated fund of India as grants-in-aid of the revenues of a state such capital and recurring sums as may be necessary to enable that state to meet the costs of such schemes of development as may be undertaken by the state with the approval of the Government of India for the purpose of promoting the welfare of the Scheduled Tribes in that state or raising the level of administration of the Scheduled Areas therein to that of the administration of the rest of the areas of that state’. A similar provision exist in this article for paying such special grants to the states covered under the Sixth Schedule out of the consolidated Fund of India.

Fifth Schedule contains provisions regarding the administration and control of the Scheduled Areas and Scheduled Tribes. There are eight states having scheduled Areas viz., Andhra Pradesh, Bihar Gujarat, Himachal Pradesh, Madhya Pradesh, Maharashtra, Orissa and Rajasthan. The Governors of these states have special responsibilities and powers. These states have Tribes Advisory Councils. The Governors of these eight states have the power to make regulations for the peace and good government of any Scheduled Area, particularly for the following purposes to prohibit or restrict the

- (a) transfer of land by or among members of the Scheduled Tribes in such area.

- (b) To regulate the allotment of land to the members of the Scheduled Tribes in such area.
- (c) To regulate the carrying on of business as money lender by person who lend money to members of the Scheduled Tribes in such area”.

(iv) RESERVATION FOR SPECIAL EDUCATIONAL FACILITIES :

The reservation for special educational facilities and admissions to educational institutions aimed at raising the educational level of the deprived group in order to bring these groups at par with the rest of the population. They are given preferential treatment in matters relating to education such as fee concession, pre and post matriculation scholarship etc. Initially the provided facilities were limited, but subsequently it was enlarged for example, the scheme of post matriculation scholarship to the Scheduled Caste and Scheduled Tribes was started in 1944-45 with 114 awards and in 1980-81 this number was increased to 7.50 lakh. The scheme of pre-matric scholarship started in 1977-78 for the children of those who engage in so called unclean occupations like scavenging of dry latrines, farming and flaying. Many coaching and allied schemes were started for improving their representation in various posts. Therefore, the reservations in educational facilities and subsequent developments were made to improve the conditions of the scheduled castes. Apart from reservation in different spheres the welfare of the scheduled castes and scheduled tribes were given the special attention by the central and the state governments. Special welfare programmes have been undertaken in the successive five years plans. The union government of India set up three parliamentary committees in 1968, 1971 and 1973 to examine the implementation of the

constitutional safeguards for the welfare of the scheduled castes and scheduled tribes.

The education is a cardinal element of social equipment. So it is necessary for the policy makers to ascertain who are educationally backward and extend protective discrimination to that section of society. This criterion may pose problem when applied, as the adaption of 'education' as the basis of classification would include a vast number of illiterates. 'Education' as the basis to determine the socially backwardness could be suitable criteria on the evil of the casteism could be eliminated and a simple formula for the application of the protective discrimination could be evolved.

"Ignorance and illiteracy are great causes and sources of all social evils. Education would not only bring the down trodden to the level of the society but enable every individual to rationalize other social and religious practices. It is because of ignorance and less education particularly in rural India where the people are comparatively much caste sensitive, education would certainly mould the thinking and reconstruct the social practices. The old rigid social norms might be broken by the impact of education"¹. Educational safeguards are provided in the constitution of India. Article 15 (4) empowers the state to make any special provision for the advancement of socially and educationally backward classes of citizens or for SC & ST. This provision was added to the constitution through the constitution (First Amendment) Act 1951 which amended several articles. This provision has enabled the state to reserve seats for SC & ST in educational institution including technical, engineering and medical colleges.

(v) JOB RESERVATION :

Today the interpretation of job reservation policy is viewed contradictory to fundamental rights, and this is constitutionally self defeating. But it is not so. Moreover fundamental rights are supplementary to job reservation policy. Mere letters of the constitutional clause in isolation would be discardant to the spirit underlying the constitution.

Ambedkar knew that the economic stability is the foundation of social and political renaissance. While detailing out the scheme of economic stability, Ambedkar postulated education and employment as an instrumental to do it. He advised the Scheduled Castes to take a white collared jobs which might enhance their society status and not the pretty professions like carpenter, ironsmith or a low grade technician. It needed high education. Till recently, no zeal regarding higher education was found among the Scheduled Castes. As such special rights to them in the field of jobs and higher learning go hand in hand.

In order to understand the present issue, it would be better to examine the constitutional provisions with certain qualified exception. It is provided that “there shall be equality of opportunity for all citizens on the matters relating to employment to any office under the state ². It further says that no citizen shall an grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for or discriminated against in respect of any employment or office under the state ³. These clauses bring all citizens on equal footing in respect of opportunities in employment areas. Article 16 (4) of the Indian Constitution imposes a restriction on the above clauses in order to safeguard the interests of the Scheduled Castes and Scheduled Tribes by the stating that, nothing in this article shall prevent the state from making any provision for the

reservation of appointment or posts in favour of any backward classes of citizens, which in the opinion of the state, is not adequately represented in the service under the state. No doubt, while framing these clauses, the whole backward of the Indian situation was not put aside by the framers of the Indian Constitution. Neglecting this background an argument is made that clauses (1), (2) and (3) of Article 16 constitute the main body of the principle of equality and 16(4) is an exception and an instance on it would render the three provisions meaningless. It is clear that Article 16(4) stands when it refers to socially and economically backward people and only if such people are not adequately taken up in the state services. About this Dr. B.R. Ambedkar feared that it may too often be challenged by the contenders if the phrase “not adequately represented” is not used. Finally the part of the clause “classes which in the opinion of the state are not adequately represented”, was accepted. Thus the backward classes do claim a privileged position in employment ⁴.

For the provision of special facilities to the backward classes, it is necessary to define Scheduled Caste and Scheduled Tribes. The President of India identifies and notifies these classes ⁵. It is provided that ‘Scheduled Caste’ means such races or tribes, castes as are deemed under Article 341 to be Scheduled Castes for the purpose of this constitution ⁶. Though the Indian Constitution does not define backward classes or who are equally backward or less backward as compared to Scheduled Castes and Scheduled Tribes. Then backwardness generally implies that they are economically poor having scanty education facilities. Education and economic difficulties result from adversities and this is a very much true of the Indian backward classes. K.M. Munshi classified that the term Backward Classes, means such groups which, irrespective of castes, need special protection in the area of employment ⁷. Article 335 provides that the

claims of the members of the scheduled castes and scheduled tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union of the State. Article 320(4) provides that consultation with the UPSC or any Public Service Commission shall not be required as respects of the manner in which any provision under article 16(4) may be made or the manner in which effect may be given to the provisions of Article 335. An injustice was done to Brahmin Community in Mysore because all except the Brahmins were declared as backward classes. Even the court upheld that the community which was adequately represented in services had to wait till the so far unrepresented communities enter the various fields of employment. Thus the misuse of this 'term' was made and this created resentment among the High Caste Hindus and Minorities like Muslims and Christians. As a whole the interest of all the backward classes including Scheduled Castes and Scheduled Tribes, the high castes captures services in greater proportion than their population.

The systems of reservation in government jobs did not achieve adequate results till late sixties as the entrants of scheduled castes and tribes were too few and junior in their ranks, ranks to pose any threat to the status quo of the upper castes. In 1967 it was felt that the constitutional safeguards were not fully implemented and in 1968 a high power committee was constituted in recruitment of Scheduled Castes and Scheduled Tribes in services. On the suggestion of this committee a number of changes were introduced in 1970 and the quantum of reservation was increased from 12 to 15% and the period to carry forward unfilled reserved vacancies was increased from two to three years. Reservations were extended to promotions on the basis of seniority subject to fitness in groups A, B, C and

D in 1972 and to higher grade in 1974. In June, 1976 reservations were extended to appointments in scientific and technical side. To carry forward the reservation in December, 1977 was permitted to exceed 50%. All these directions were effective in public undertakings, statutory and semi government bodies, autonomous bodies including municipal corporation, cooperative institutions, universities and voluntary agencies receiving grant in aid from the government. This rapid acceleration both horizontally and vertically in jobs during the seventies had been the outstanding feature of the reservation policy. But certainly the acceleration in the implementation of the policy brought anti-reservation feeling in the upper castes. They resisted preferential treatment to low merit Scheduled Castes. However, "the efficiency is taken care while making the appointments of Scheduled Castes to government jobs" ⁸. But there is no objective criterion to determine efficiency.

(vi) SOCIAL OPPORTUNITIES (ABOLITION OF UNTOUCHABILITY)

Untouchability is the worst kind of atrocity on the Harijans. The makers of the Indian Constitution were well aware of the chronic disease of untouchability. In the post Independence India, the founding fathers of the Indian Constitution took a historic and epoch making step by abolishing the stigma of untouchability associated with Scheduled Castes by not only granting them equal rights with other citizens but also by ensuring them special privileges for educational, economic and cultural upliftment to enable them to catch with those who were ahead of them. The Constitution of India banned untouchability by embodying Article 17 which states that "untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising act of untouchability shall be an

offence punishable by courts. Five years after the commencement of the Constitution, the Untouchability (offences) Act, 1955, was passed and set into operation. The enforcement of the Act, however was not satisfactory. A Bill 'Untouchability (offences) Amendment and Miscellaneous Provisions' was introduced in the Lok Sabha in 1976. After receiving several amendments by the joint committee, it was passed, renaming it as Protection of Civil Rights Act in 1976. This Act has a little impact on the abuse of untouchability, particularly in the rural areas. The rural people practice untouchability in connection with temple entry, fetching water from public wells, hotels and other shops providing services of daily life. The observance of untouchability is based on the idea of purity and impurity specially connected with occupations – clean and unclean. The existence of such discrimination could date back to ancient time. In Chhandogyoanished, though there are some contrary references about Chandal, he was degraded and was ranked with that of dog and pig⁹. This refers to either unclean living of Chandal or the unclean nature of their occupation or both. But the progeny of the most hated of the reverse order of mixed unions that of a Brahmin female and Shudra Male¹⁰. According to I.P. Desai untouchability is a kind of behaviour which is based on the concept of pollution and that it has religious and secular sanctions¹¹. He further adds that the religious conversions could not improve their social status. Article 23 and Article 24 of the Indian Constitution 940 provides. Social safeguards for Scheduled Castes and Scheduled Tribes.

From the above discussion it is clear that the reservations in appointments of jobs and in education brought significant consequences for Scheduled Castes as well as for the non-Scheduled Castes. A number of studies have shown that the spread of education among the Scheduled Castes has been slow as compared to non Scheduled Castes. Secondly,

among these castes themselves some groups have made for more rapid progress than some others. Thirdly, their capacity to utilize the privileges offered by the government has tended to vary from one sub-group to another, which may be attributed to the varied degree of their political consciousness, social and occupational positions in traditional hierarchy, capacity to break away from this hierarchy and influence of urbanization.

Keeping in mind the consequences of reservation policy, there is a need to continue the benefits for Scheduled Castes. The gap between the Scheduled Caste and the non-Scheduled caste is still very wide. What is important is that the tendencies of elitism must be checked within the Scheduled Castes. The privileges should reach those who have not benefit from reservations. So far Institutional and other measures may be adopted for the withdrawal of benefits from those who have already reached their status. Thus the reservations within the reservations may be introduced to check elitism. It was suggested by Shah in 1985 and Agarwal and Ashraf in 1970, a time bound reservation policy which in Galanter's (1984) terminology is a process of de-scheduling and de-reservation. The process of locating the real beneficiaries and of granting benefits to them and to de-schedule them should be a continuous one. There may be problems for the implementation of this process as the scheduled castes do not constitute a homogenous cultural entity and are wide spread in geographical regions of the country. For this the regional specific criteria may be adopted other measures may be not to allow reservation in job or promotion to a person more than once, and the children of a scheduled caste with certain economic positions should not be allowed to benefit from the reservation policy. The concept of reservation within the reservation may reduce anti-reservation feeling among the non-scheduled castes.

The other way could be to generate awareness through improvement in communication among the Scheduled Castes to enable them to know about the existence of special privileges, financial allocation and other reservations. Such an exercise may prove useless if a large number of them are ignorant and illiterate. Institutional Structural measures may be adopted to raise their literacy rate. Further more , the conditions of the work may be changed in occupations with which still the stigma of untouchability is associated. But such a task may involve long span of time. Therefore, it is necessary that the short term changes like proper administration and implementation of the policy may prove useful.

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CHAPTER-IV (B)

DR. B.R. AMBEDKAR AND RESERVATION POLICY AND HIS SPEECHES IN THE CONSTITUENT ASSEMBLY

Reservation of seats for Depressed Classes in legislatures, and other places was absolutely necessary, according to Dr. B.R. Ambedkar. Thus by this his community could receive representation in the making of laws, public services and educational institutions. He had demanded reservation in Military and Police. The social and economic conditions of the Depressed Classes, was not very sound. This prevented them from competing with caste Hindus and unless and until the reservations are given to them they will not be able to get any place any where. The most important result of such a provision would be that the seats reserved for Depressed Classes would definitely be filled up by the members of community, and, they would be in a position to do something for safeguarding the interests of their fellow-beings as well as raise themselves to higher levels of thinking and living. They would be able to receive technical and professional education which should get them good jobs; gradually, they would gain general respect and equal status. As a member of Legislature and executive, they would be able to raise their voice against the situation in which they had been living for centuries.

Dr. B.R. Ambedkar viewed with disfavour the so-called representatives of Depressed Classes who by their grandiose talk about their improvement were misleading people. He suggested that there should be special Employment Exchange at the centre and in the provinces to ensure reservation of post for Scheduled Castes, "These Employment Exchanges would function as liasons between the Governments and the employment seekers from the Scheduled Castes"¹.

He advised setting up of “an independent Minorities Commission having jurisdiction over these Employment Exchanges to see that the Reservation is properly administrated ². In other words, he stressed the need for suitable agencies at Central and provincial levels to ensure that the provisions for reservation was implemented faithfully.

Dr. B.R. Ambedkar urged that the Depressed Classes should be classified as a distinct community, entirely different from the Hindu. Therefore ‘some posts should be reserved for them in the legislatures and that the existing practice of nominating one or two members should cease. He demanded that “Depressed Classes should have 22 out of 140 seats in the Bombay legislative council ³. He also complained about the behaviour of Bombay Council towards untouchables. Thus Dr. Ambedkar build up a case for reservation of seats to ensure the proper working of safeguards at the centre and in the provinces.

Dr. Ambedkar made social justice a founding faith and built into it humanists provisions to lift the level of the lowly Scheduled Castes and Tribes to make democracy viable on an equal footing.

In his final address to the Constituent Assembly, Dr. Ambedkar gave a caution and premonition and derived home this point not to interpret but to illumine the scheme of the equality code and casteless society plea. He observed :

‘The third thing we must do is not to be content with the mere political democracy. We must take our political democracy a social democracy as well. Political democracy cannot last unless there lies at the base of it social democracy. What does social democracy means ? It means a way of life which recognises liberty, equality, fraternity as the Principles of life. There principles are not to be treated as

Separate items in a trinity. They form the union of trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy. Liberty cannot be divorced from equality, equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity, without fraternity, liberty and equality could not become a natural course of things. It would require a constable to enforce them. We must begin by acknowledging the fact that there is complete absence of two things in the Indian Society; one of these is equality. On the social plane, we have India a society based on the principles of graded inequality which means elevation of some and degradation of others. On the economic plane, we have a society in which there are some who have immense wealth as against many who live in abject poverty. On the 26th January, 1950. We are going to enter into a life of contradictions. In politics we will have equality and in social and economic life we will have inequality. In politics we will be recognising the principle of 'one man one vote and one vote one value'. If our social and economic structure continue to deny the principle of one man one value, how long shall we continue to live this life of contradictions ? How long shall we continue to deny equality in our social and economic life ? If we continue to deny it for long, we will do so only it for long, we will do so only by putting our political democracy in peril. We must remove this contradiction at the earliest possible movement or else those who suffer from inequality will blow up the structure of political democracy which this Assembly

has so laboriously built up”.

It is true to say that the drafting of the Constitution of India was done by Dr. Ambedkar himself. He accomplished this task within a record time at the end of 1948. Shri Krihnamachari on 5th November, 1948 delivered a speech in the Constituent Assembly which shows that Dr. Ambedkar was in fact the chief architect of our democratic constitution. He also candidly stated : “Ultimately the burden of drafting the constitution fell on Dr. Ambedkar and I have no doubt that we are grateful to him for having achieved this task in manner which is undoubtedly commendable”. Even today the constitution of India drafted by Dr. B.R. Ambedkar has stood the test of time and made India a strong and stable democratic country in the world.

Dr. B.R. Ambedkar had a great sympathy for the Depressed Classes. He felt determined to assert their rights of equality and tried to safeguard their interests through legal recourse. He held that emancipation of untouchables was a matter of right upheld by law and statutes and not ‘through derivative concession’. Dr. Ambedkar’s approach on this issue was “radical realistic and emancipative”⁴.

Dr. Ambedkar took Gandhian concern and work for untouchables with a pinch of salt. He did not seek for mercy but justice for his people. He was convinced that unless and until they are given representation in the Legislative Assemblies. They would not be able to improve their lot. Ambedkar was sure that unless Depressed Classes were recognised as a separate political entity they would have no place in political and social life. He was of the view that separate electorates along were not sufficient, separate electorates without means are useless, political safeguards are necessary to make this provision useful⁵. He maintained that Depressed Classes has no rights and even if they had any, the majority would not

permit them to enjoy those rights. "There are chances that they are discriminated against either in the legislation, or in administration, or in public rights of citizenship. Therefore, it is necessary to safeguard the position of minorities, constitution should provide certain limitations to prevent the abuse of power" ⁶.

Dr. Ambedkar stressed that there should be a provision for "certain safeguards in the constitution itself or an instrument of advice to the Governor regarding the Education of the Depressed Classes and their entry in to the public services" ⁷. He contended that In India public services were almost exclusively manned by people of one community; there was great danger of the vast power being abused against a particular class or section. He advised an admixture of castes and creeds, including Depressed Classes in public services of the country. He demanded a 'certain percentage in public services to be reserved for the Depressed Classes' and observed "there would be no difficulty in guaranteeing such safeguards by a clause in the constitution" ⁸. He insisted on safeguards because "the handicap of Depressed Classes is real, but these safeguards should not be such that they will perpetuate the differences which must be bridged. It is an obligation on the majority to consent for these safeguards and on minorities not to insist such safeguards as will block the way of the unity" ⁹. Thus Dr. Ambedkar had all along pleaded for safeguards for Depressed Classes in any constitutional arrangement.

(i) DR. B.R. AMBEDKAR AND CONSTITUENT ASSEMBLY DEBATES :

Dr. Ambedkar was elected to the Constituent Assembly of India by the members of the West Bengal Legislative Assembly though he was defeated in Bombay. He was elected on the Drafting Committee and later appointed as its Chairman. The Constituent Assembly met first on 9th

December 1946 on 15th. August, 1947, it became sovereign Constituent Assembly of free India. The first Draft of the Constitution was presented on 4th November, 1948 and final constitution was adopted on 26th November, 1949.

Ambedkar's main objective in the Constituent Assembly was to safeguard the interest of the Scheduled Castes. He said that he had not the ambition of Drafting the Constitution ¹⁰. It was charged in the Constituent Assembly that the Draft Constitution was a copy of Government of India Act, 1935. Ambedkar replied that there is nothing to be ashamed of in borrowing. It involves no plagiarism ¹¹. In his opinion to appoint a Constituent Assembly was superfluous. The main thing was to delete those sections of Government of India Act which were inconsistent with dominion status. The only work in the Constituent Assembly was to find out the solution of the Communal problem ¹². According to Dr. Ambedkar the legislature should not be trusted to prescribe the form of the Constitution. He justified that the forms of administration must be incorporated in the Constitution ¹³.

Dr. Ambedkar in the Constituent Assembly said that what is very eminent is that Indian Society is allowing itself to consolidate as an equitable system for practising political equality to Indian citizens by sustaining inequality in social and economic life. The probability is that this contradiction between political equality and social and economic inequality in our society may surface disastrously in our democracy at any time. He further said that this contradiction should be removed at the earliest possible time otherwise those who suffer from inequality will blow up the structure of political democracy.

The most important aspect of Constitutional provisions dealing with citizenship was that it had established a uniform or single system of

citizenship for the whole country. This was in striking contrast to the double citizenship prevailing in federal states. Dr. Ambedkar said that in all the dominion countries, the residents would be divided into three categories. This would mean that the citizens of the dominions residing in India would not be treated as aliens would not have, but they would certainly not be entitled to get full rights of citizenship which was given to the people of India ¹⁴.

The term minority was used in Article 18 of the Fundamental Rights not in the technical sense of the word minority as it was used for the purpose of certain political safeguards. It was used to cover which were none the less minorities in the cultural and linguistic sense. Dr. Ambedkar classified that the Articles regarding minorities (29 and 30) intended to give protection in the matter of culture, language and script not only to minority in the wider sense of the term ¹⁵. Claims of minority communities to service and posts were emphasized by him. The Scheduled Castes were socially untouchables, this social stigma worried Dr. Ambedkar very much. He thought that once political and social equality was established and educationally the Scheduled Castes were advanced, every other difficulty would disappear. For him Fundamental Rights would mean establishment of equality only. He replied that we are having the liberty in order to reform our social system which is so full of inequalities, discriminations and other things which conflict our Fundamental Rights. For pulling their weight in the political field, he depended on adult franchise there was bound to a big change ¹⁶.

The Constituent Assembly task was to draft a constitution that would serve the ultimate objective of social revolution ¹⁷. If this social change cannot be brought, Mr. J.L Nehru warned that all our paper constitution would become useless. He declared. If India goes down, all well go down.

If India thrives, all will thrive, and if India lives, all will live ¹⁸. Accordingly to Mr. Devendranath Samantha, the Indian independence was the outcome of untold sufferings and immense sacrifice of the masses of the country and therefore Constitution should be such as to promote the interest of the masses and to benefit the country as a whole ¹⁹.

The objective resolution passed by the Constituent Assembly sets – put the aims and objectives in framing the Constitution. It expressed the resolve of the Constituent Assembly to frame a Constitution committed to the ideal of social revolution by guaranteeing and securing to all the people of India, justice, social, economic, political, equality of status and of opportunity before the law, freedom of thought expression, belief, faith, worship, vocation association and action subject to law and public morality and where in adequate safeguards shall be provided for minority, backward and tribal areas and depressed and other backward classes ²⁰.

The Expression ‘place of birth’ was inserted in Article 9 by way of amendment on the motion of Syed Abdul Rauf ²¹, in the Constituent Assembly on 29th November said that ²² the intention of the Article 9 is to prohibit discrimination on grounds of religion, race, caste or sex. We have prohibited discrimination on grounds of religion, race, caste, or sex. But I am afraid that the evil elements who might attempt to make discrimination against citizens will do so not on the ground of religion, race, caste or sex. In my opinion attempts only be make discrimination against citizens on the ground of place of birth and under guise of local patriotism. To guard against this possibility. I have brought this amendment. This amendment was duly accepted by Dr. B.R. Ambedkar who was the Chairman of the Drafting Committee and the Constituent Assembly ²³. Thus the expression occurs in clause (1) and (2) of Article 15 of the Constitution.

When Dr. B.R. Ambedkar asked whether the word ‘shops’ in the expression “access to shops in Article 9 of the Draft Constitution of India 1948 also included places like ‘a barber’s shop’ or a ‘shaving saloon’ or laundaries. On this point Dr. Ambedkar replied that the word shop does not include laundry and shaving place. A laundry man would be a man sitting there offering his service for any person who enters his saloon ²⁴.

Dr. B.R. Ambedkar also made clear in reply to some other questions that the word ‘tanks’ in Article 9 included ponds and the expressions “places of public resort” would include a burial (or cremation) ground subject to the fact that such a burial ground would partly or wholly maintained out of public funds ²⁵.

In regard to the expression ‘state funds’ in Article 15. This expression was substituted by the Constituent Assembly on 29th November, 1948, on the motion of Dr. Ambedkar himself. Dr. Ambedkar in support of his motion said that ²⁶ why the Drafting Committee felt that the words the revenues of the state should be replaced by the words ‘state funds’ is a very simple thing.

In the Constituent Assembly Domodar Das was apprehensive that reservation policy might give rise to casteism and favouritism ²⁷. Though our constitution does not use caste as criterion of discrimination, it speaks of backward class, still caste consciousness is bound to creep into the reservational benefits.

The problem of protective discrimination aims at the perpetuation of self abolition in the course of time. Though Article 15(4) and 16(4) do not speak of transitory nature, but close scrutiny of the provisions may warrant periodicity. During the Constituent Assembly Debates one member who was staunch supporter of reservation wanted the continuation of reservation

for 150 years on the plea that it had been the period during the opportunities had been denied to backward classes²⁸.

Damodar Das Seth who was the member of the Constituent Assembly proposed that, the necessary facilities should be given to the backward classes for improving their educational qualifications and raise general level of their uplift. But appointments and posts should be left to the discretion of public service commission to be made on merit and qualifications and no concessions whatever should be allowed to any class on the plea that the same happen to be backward²⁹.

To quote K.M. Munshi, "The word backward signifies that class of people - does not matter whatever you call them untouchables or touchables belonging to this community or that a class of people who are so backward that special protection is required (for them) in the services"³⁰.

Dr. B.R. Ambedkar who had emerged as champion of the cause of depressed classes had become accommodating by the inauguration of the Constituent Assembly. During the Debates he realised the political reality and expressed optimism when he said "I know today we are divided politically, socially and economically. We are a group of warning camps and I may go even to the extent of confessing that I am probably one of the leaders of such a camp. But, Sir with all this I am quite convinced that given time and circumstances nothing in the world will prevent this country from becoming one, with all our castes and creeds, I have not the slightest hesitation that we shall in same form to be a united people"³¹. He too felt that preferential treatment of Depressed Classes was a means to the end of united national building. He said, "so far as the ultimate goal is concerned, I think none of us need have any apprehensions. None of us need have any doubt. Our difficulty is how to make the heterogenous mass

that we have today take decision in common and march on the way which leads us to unity ³².

Dr. Ambedkar's compromistic attitude is also clear from his memorandum submitted to the Advisory Committee headed by Sardar Patel and moderation. He strongly refuted the charge that the Scheduled Castes were not a minority and asserted that the Scheduled Castes were more than a minority as "their social, economic and educational condition was so much worse than that of the citizens and other minorities that in addition to protection, the Scheduled Castes would require special safeguards. He had submitted a list of safeguards for the Scheduled Castes and had suggested their continuance for 25 yrs, when the position might be reviewed. But when the committee decided a period of 10 yrs. Dr. Ambedkar happily agreed to it with note that if it was considered necessary to extend the period at the end of 10 yrs. " it would not be beyond their capacity or their intelligence to invent new ways to getting the protection which they were promised here ³³.

The development since the inauguration of the Constituent Assembly disclosing its objective of the adequate safeguards for the minorities backward and tribal areas and depressed and other backward classes subsequent formation of the Advisory Committee on minorities, Fundamental Rights and its reports ³⁴, to the President's Constituent Assembly of rejecting separate electorates, reservation in cabinets and services and reservation of seats for Muslims, Christians, Sikhs and other religious minorities and ultimate minimization of concessionary benefits to the Scheduled Castes and Anglo-Indians explains the peculiar statesmanship of the framers of the constitution to wipe out the statutory basis of communalism ³⁵. Ultimately schism lost and unity won. The

abolition of reservation as communal grounds was hailed by Nehru as a 'historic turn in our destiny'³⁶.

The banner of minority was avoided in the case of reservation in the services. The basis of special treatment was backwardness and not communalism. Backwardness was not dependent on majority minority consideration. The use of expression 'backward' was purposive. As B.N. Rah pointed out, absence of such an objective could extend the scope of special treatment and would have included any class who were not adequately represented in the Services under the state. The ultimate result would have been as apprehended by Dr. Ambedkar "unless you use same qualifying phrase as backward the exception made in favour of reservation will ultimately eat up the rule altogether"³⁷. K.M. Munshi classified that the benefit of reservation was to go really to the backward class of people. The provision was argued to have two purposes : 'In the fundamental right in the first clause we want to achieve the highest efficiency in the services of the state..... At the same time, in view of the conditions prevailing in several province, we want to see that backward classes, classes who are really backward should be given scope in the state services the backward signifies that class of people – does not matter whether you call them untouchables or touchables belonging to this community or that a class of people who are so backward that special protection is required (for them) in the services'³⁸.

Pandit Nehru said in the Constituent Assembly "but where you are up against a full blooded democracy, if you seek to give safeguard to a minority and a relatively small minority, you isolate it. May be you protest it to a slight extent, but at what cost ? At the cost of isolating it and keeping it away from the mainstream"³⁹. Dr. Ambedkar had also expressed the apprehension of segregating the SC's and ST's from the general life⁴⁰.

It has been noted that at appropriate places even during the Constituent Assembly Dalits some members had expressed apprehensions that preferential treatment might put a premium as backwardness and inefficiency ⁴¹ and would amount to the very negation of efficiency and good government ⁴².

Ambedkar was one of the principal architects of the constitution that emerged from almost three years of deliberation. Ambedkar's hope of leading an independent political party in which untouchables played a central role founded in 1945 provincial election as they had in the 1937 elections. Through the good offices of the Muslim League, he became a member of the Constituent Assembly, which became the governing body of India when the country was divided and given independence on August 15, 1947. In a gesture of reconciliation, Prime Minister Nehru appointed him Law Minister and he was chosen as Chairman of the Drafting Committee of the Constituent Assembly. It is a federal constitution : authority is explicitly apportioned between the center and constituent territorial units. There is a greater subordination of the units to the center than in the United States, but the states have considerable autonomy and are more than mere administrative divisions. It is a written Constitution – with the distinction of being longest in the world. It had to be written in order to be federal – in order to arrange the division of powers between the centre and the states, but also – and this accounts for its length because there were a number of other matters which the Constitution – makers wished to put beyond the reach of temporary or narrow majorities. These include safeguards for various minorities and a large part of the fundamental structure of govt. apparatus. Thus detailed provisions regarding the judiciary, the civil service, and the proceedings of legislatures, adopted without fundamental change from the British administration are all entrenched in the

Constitution. There is a written and enforceable set of Fundamental Rights – modeled in large measure after the United States Bill of Rights. There is a set of Directive Principles of state policy, which specify the general goals of governmental policy – the right to work, higher living standard, free and compulsory education, etc. – and anticipate a welfare state which was described by one skeptical observer as ‘Fabian Socialism without the socialism’⁴³. Finally judicial review is explicitly provided the constitution is to be interpreted and its provisions enforced by a unitary national judiciary.

The fundamental rights contains bans on discrimination on grounds religion, caste, set language etc. The attempt to secure equality goes beyond guarantees of equal treatment by government. Crucial provisions regulate not only ‘state action’ but also the behaviour of private person and groups. Caste discrimination by government or by private individuals is banned. But it was recognized that even handed treatment would not suffice to overcome the cumulative disadvantages of those at the bottom of social hierarchy. To promote the advancement of the untouchables, tribals and other ‘socially and educationally backward classes’, the constitution allows protective or compensatory discrimination in their behalf. The notion of communal quotas and safeguards which had become an accepted principle of administration during the last forty years of British rule was decisively rejected as a general principle of governance. There are no safeguards for religious minorities apart from the guaranteed fundamental rights. Only for the S/C and S/T (and to a lesser extent, for other backward classes) are these devices counteracted. There is a deliberate departure from formal norms of equality in order to offset the historic inequalities of these groups.

Ambedkar's role in the Constituent Assembly under lives the decisive rejection of Gandhian notions of village self-rule. While Gandhi idealized village India and its handicraft technology. Ambedkar despised Indian villages as idem of ignorance, narrow mindedness and communalism ⁴⁴ and ardently supported machine technology which would provide leisure, cultural advancement and finally equality. To the same end, he rejected Gandhi's ideal of trusteeship by the rich in favour of a kind of state socialism which would promote rapid industrialisation. He was the supporter of centralized parliamentary govt. rather than of village autonomy. In all this Ambedkar stood closer to the left wing of congress than either stood to Gandhi.

The constitution incorporated much of the secular program he had championed, but Dr. Ambedkar was dissatisfied with the congress govt. performance. After a bitter political disappointment in the 1952 election, he disoccured his role as designer of the constitution. Dr. Ambedkar's bitters disappointment is understandable, but in retrospect and from afar, his sense that the constitutional protections which he designed or atleast concurred in were a failure seems less than fully warranted. The untouchables, unlike the Muslims were a scattered minority with no territorial base, no unity among themselves no rallying point in religion or historical glories, and with little capacity and fewer resources for organisation. If ultimately they had little choice but to accept what they were given by the majority, their leadership did well by them in obtaining safeguards and preferences out of the independence struggle. Although their constitutional position might have been even stronger, the major shortfall has been not in constitutional protection but in organisation and imagination to utilize effectively the protections and opportunities that are available. Through out his career Dr. Ambedkar had written on the historical aspects of the caste system and

displayed a strong interest in Buddhism, which he considered a religion of equality and social reform. In 1955 before his death, he launched a mass movement for conversion to Buddhism that inspired millions of untouchables to abandon Hinduism and embrace Buddhism. A generation later, the Buddhists were a significant element of both political militancy and intellectual leadership; and Dr. Ambedkar was the venerated 'patron saint of the untouchables. He was respected as a 'founding father' and was a prime symbol of self assertion by low castes.

The framers of the constitution were well aware of the peculiar problems of Indian society. They wished to safeguard against dangerous effect of weakness, which cherished in our society and projected to give special favours to redress the wrong done in the past by creating social disabilities Sardar Patel had said that to do right thing to all manner of people. There was peculiar desire to protect socially depressed. People along with maintenance of societal goods. Preferential treatment was aimed to confine only to deserving classes. This was the reason why T.A. Ramalingan Chattiari suggestion delete the word 'backward; from clause (3) of Article 16 was negatived. The drafting committee reconciled opposite points of view to produce a workable. Proposition which would be accepted by all. This idea of harmonious relation between backward and non backward classes contributing effectively to main stream of national life was clear during the Assembly debates. It was very optly pointed out by Dr. K.M. Munshi :

..... What we want to secure by this clause of Article 16(4) are two things. In the fundamental right in the first clause we want to achieve the highest efficiency in the services of the state.... At the same time; in view of the conditions in our country prevailing in several provinces we want to

see that backward classes, classes who are really backward, should be given scope in the state services;..... the word “backward” signifies the class of people – does not matter you call them untouchables belonging to this community or that – a class of people. Who are so backward that special protection is required for them in the services ⁴⁵.

Protective discrimination was to serve as an effective formula of societal balance between the enhancement of status of backward community and general social good. To quote Dr. Ambedkar : “If reservation were made for a community or collection of communities, the total of which came to something like 70% of the total posts under the state and only 30% of the total posts are retained as the unreserved, could anybody say that the reservation of 30% as to general competition, would be satisfactory from the point of view of giving effect to the first principles, namely that there shall be equality of opportunity. Therefore the seats to be reserved, if, the reservation is to be consistent with sub clause (1) of Article 10 (now 16) must be confined to a minority of seats ⁴⁶. The Constituent Assembly was acting as first parliament after the commencement of the constitution, when it inserted a new clause to Article 15 immediately after the Supreme Court decision in **State of Madras V Champkam** ⁴⁷.

The Constitution clearly indicates the balancing tendency. The Constituent Assembly and its product the constitution intended to harmonize between the claim of special treatment for weaker section of the society and administrative efficiency i.e. social requirements.

The Constitution makers aimed, at reservation policy ⁴⁸. The object behind the reservation was clarified by Sardar Patel as “Even if today any concession is made it is with the sole object of easing the suspicions of even the smallest group in this house, because I think that a discontented

minority is a burden and a danger and that we must not do anything to injure the feeling of any minority so long as it is not unreasonable”

The framers were alive to the problem of national integrity and peculiar backwardness of some societies. They intended to produce secular state on secular criteria. That was the reason prevailing rejection Prof. K.T. Shah's amendment to Draft Article 15 for adding the words 'or for Scheduled Castes or Backward Tribes, for their advantage, safeguard or betterment. The object of his amendment was. "In regard to Scheduled Castes and Scheduled Tribes, it is an open secret that they have been neglected in the past and their rights and claims to enjoy and have the capacity to enjoy as equal citizens happens to be denied to them because of their backwardness. I seek, therefore by this motion to include them also within the sub clause (2), so that any special discrimination in favour of them may be regarded as violating the basic principles of equality for all classes of citizens in the country. They need and must be given, for sometime to come at any rate, special treatment in regard to education, opportunity to employment and in many other cases where there present inequality, their present backwardness is only a hindrance to the rapid development of the country"⁴⁹.

Even Scheduled Caste leader Dr. Ambedkar was ready to deny protective discrimination in educational institutions. He thought that it would create problems of societal assimilation like Black and Whites in America due to 'Separate' but equal policy. Dr. Ambedkar said : "the object which all of us have in mind is that the Scheduled Caste and Scheduled Tribes should not be segregated from the general public. For instance none of us would like that a Separate School should be established for the Scheduled Castes when there is a general school in the village, open to the children of entire community. If these words are added,

it will probably give a handle for a state to say, 'well we are making special provision for the Scheduled Castes'. To my mind they can safely say so by taking shelter under the Article if it is amended in the manner the Professor wants it" ⁵⁰. The idea of evolution of secular idea in Indian Society, wished by the framers may be supported by protective discrimination which speaks in terms of backwardness and not of caste. This sociological approach of framers has been continuously felt by the judiciary.

The general rule under Article 16 indicates that the whole of the nation is an employment unit and by non discriminatory selections efficiency in services should be maintained. Article 16 (3) recognises an exception to the general non discriminatory provisions to relating to employment. It stipulates parliamentary laws prescribing residential qualification in relation to any class or classes of employment under a state or territory. Such restrictions in case of state employment was engrafted for the sake of efficiency. Dr. Ambedkar pointed out , "..... it must be realized that you cannot allow people who are flying from one province to another, from one state to another, as mere birds of passage without any roots, without any connection with that particular province, just to come, apply for posts and, so to say, take plums and walk way ⁵¹. The framers were well aware of the existence of rules fixing residential qualifications for services in most of provinces and therefore they wished a uniform period of residence to be prescribed by the parliament ⁵².

Minority problem was one of the prominent issues confronting before the Constituent Assembly. The issue of majority/minority disbelief was at surface even at the time of famous Nehru Report of 1928 and it played a vital role in formulation of fundamental rights. The problem of minority was acute though there is controversy regarding the reasons

encouraging minority consciousness. Most of the prominent Assembly members thought that it was entirely a creation of the British Government ensuing from the introduction of separate communal electorates. As a means of divide and rule policy. According to Dr. K.M. Munshi, as a staunch Assembly member, the most important task of Constituent Assembly was to secure political consolidation of the Nation. Its basis had been destroyed by the British by statutorily fragmenting political idea into religious communities under the guise of protecting the minorities. To others minority based divisive tendency was largely the result of fundamental antagonism between Hindu and Muslim cultures. Throughout the debates the efforts of nationalist leaders was to inspire a feeling of broad mindedness and mutual confidence among all sections of the Indian Society. Pandit Govind Ballabh Pant appealed to the members at the time of moving the resolution for the election of Advisory Committee :

“..... Let not the lesson of history be lost. It is a lesson which should be burnt deep in the hearts and minds of all minorities that they can find their protection only from the people in whose midst they live and it is on the establishment of mutual good will, mutual trust, cordiality and amity that the rights and interests not only of the majorities but also of the minorities depend. This lesson of history. I hope will not be forgotten”⁵³.

Raj Kumari Amrit Kaur who had the privilege to become the first woman member of the union Cabinet, opposed both reservation of seats and weightage for any community for her, “anything in the nature of privilege for any special class or section..... was wrong in principle and when it was given on the ground of religion, it was doubly wrong, for all religions stood for brotherhood of man, and non for separation”. Mr. H.C. Mukerjee too speaking for Christian community gave up all claims of safeguards in the interest of national solidarity. He moved on May 11,

1949, a resolution, "That the system of reservation for minorities other than the Scheduled Castes in legislature be abolished", which was passed by the advisory committee. Nehru greeted this move by saying that, it shows that we are really sincere about this business of having a secular democracy" ⁵⁴. Advanced Communities like Parsis claimed safeguards over and above fundamental rights. The Advisory Committee appointed by the Constituent Assembly consisted of members drawn from Muslims, Scheduled Castes, Sikhs, Anglo-Indians, Parsis and representatives of Tribal Areas. The safeguard claimed by minorities fell into different classes. Minorities claimed safeguard for representation in legislatures reservation of seats for minorities in the cabinet, Reservation of posts for minorities in the Public Services and Administrative Machinery to ensure equal protection of minority rights. There was great pressure to ensure constitutional safeguards for them. To some minority vocal leaders, the very first fact that minority consented to remain with majority had sufficient jurisdiction for such special privileges and protections. Dr. B.R. Ambedkar a stouchn Harijan leader stated before the Assembly:

"Speaking for myself that the Constituent Assembly has done wisely in providing such safeguards for minorities as it had done. In this country both minorities and majorities have followed the wrong path. It is wrong for the majority to deny the existence of minorities. It is equally wrong for the minorities to perpetuate themselves. A solution must be found which will serve a double purpose. It must recognise the existence of minorities to start with. It must also be such that it will enable majorities and minorities to merge some day into one. The solution proposed by the Constituent Assembly is to be welcomed because it is a solution which

serves two fold purposes. To diehards who have develop a kind of fanaticism against minority protection. I would like to say two things. One is that minorities are explosive force which, if it erupts, on blow up the whole fabric of the state. The other is that the minorities in India have agreed to place their existence in the hands of majority”⁵⁵.

Under unavoidable and compelling circumstances Assembly had to concede certain safeguards in favour of minorities by trying to minimize, as far as possible, the adverse effect of minority consciousness. Consequently in order to remove completely all semblances of communal reservation from the constitution the range of provision concerning special consideration for appointment in the Public Services⁵⁶ and appointment of special officer to safeguard (Article 338) was limited only to the Scheduled Castes. The ideas of separate electorate for minorities and reservation of seats for minorities in the Cabinet was abandoned. The protection of minorities took two forms. First, was the inclusion of non discriminatory treatment, freedom of religion relating to cultural and educational rights of minorities in the fundamental rights and the second made to protect minority interest was inclusion of certain provisions in the constitution but not within the Fundamental Rights such provision included adequate minority representation in Parliament and state legislatures, civil services etc.

Not only religious minorities need special safeguards but also the minorities based on language culture or script. The judicial interpretation also finds support from the Constituent Assembly Debates and academic writings. It rules out isolationist ideas and ensures that not only religious minorities can enjoy constitutional protections of Article 29(1) but all sections of society which are in need of such protections. Dr. B.R.

Ambedkar said “the term ‘minority’ was used therein not in the technical sense of the word ‘minority’ as we have been accustomed to use it for purposes of certain political safeguards..... It is also used to cover minorities in the technical sense, but which are minorities in the cultural and linguistic sense..... that is the reason why we dropped the word ‘minority’ because we felt that the word might be interpreted in the narrow sense of the term, when the intention of this house was..... to use this word minority in a much wider sense..... It was felt that this protection was necessary for the simple reason that the people who go from one province to another and settle there permanently. They do not uproot themselves from the province from which they have migrated but they keep their connections” ⁵⁷.

Thus we have seen that in the Constituent Assembly debates the assembly emphatically as pleaded for the welfare of the society as well as individuals at all levels. The aimed objectives of the assembly informing the constitution was to protect the interest of all the constituents of the territory by maintaining harmony. The Constituent Assembly has wisely taken into consideration the rights as well as the duties of every person as well as the state for maintaining harmonious stability in the constitution. As Chairman of the Drafting Committee Dr. B.R. Ambedkar had greater scope than any other individual for shaping the constitution. But it should be realized it was a Constitution written and finalized by adopting the most democratic method of open deliberation. The task of B.R. Ambedkar was to give the required shape to the constitution. He produced a formidable document incorporating the ideas and directives that emanated in the Constituent Assembly. Ambedkar expressed the ideas and directives in a coherent fashion using his unsurpassed constitutional skill and legal acumen. The constitution, therefore, bears his impact from the beginning to

end. He had the unique privilege of moving the draft constitution for consideration in the Constituent Assembly. He had to explain every clause of the draft and reply to the criticism from the members. In this work Ambedkar got an opportunity to understand his basic and political ideas. This formidable edifice that established a democratic machinery could not be over the handiwork of one man. Dr. Ambedkar is honoured for his contributions is being the Principal architect of the Constitution. His contribution is substantial, significant and spectacular. He should be remembered not only as a great social reformer, a patriot, a vigorous Champion of justice and freedom but much more as great constitution maker that the nation could produce.

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CHAPTER V

CHAPTER – V (A)

EQUALITY BEFORE LAW

(i) BACKGROUND OF RIGHT TO EQUALITY

Right to equality naturally got priority under the Constitution of India in its preamble as well as in Chapter-III which deals with the fundamental rights of the citizens. The most important reason for laying emphasis on this right was due to the prevalence of discrimination on grounds of religion, race or place of birth in large scale during British rule. The fundamental rights guaranteed under the Indian Constitution are not based on the theory of natural rights and reasonable restrictions have been imposed on the exercise of different rights in the interest of community. Pt. Jawahar Lal Nehru in this connection rightly observed “no individual can override ultimately the rights of the community at large and no community should injure and invade the rights of the individuals unless it be for the most urgent and important reasons ¹. Moreover it cannot be claimed that the framers of the Indian Constitution could draft a wholly indigenous or a novel constitution to achieve this objective of rightly balancing the interests of the individual with those of the community. Dr. B.R. Ambedkar was quite correct when he observed that there could be nothing new in a constitution framed so late in the history of the world. According to him “in a constitution framed so late in the day are variations made to remove the faults and to accommodate it to the needs of the country”². And nowhere this stark fact and pragmatic approach are more apparent than in the formulation of the fundamental rights and especially in setting forth systematically the rights relating to equality.

The Indian society has been traditionally pluralistic and its culture has been defined by a rich variety of diversities. The question of *formulating a set of fundamental rights guaranteeing right to equality in*

such a social context, harmonising the rights of the individual with those of community, could not be free from controversy or confusion. According to Sardar Vallabh Bhai Patel, the Chairman of the Advisory Committee, "These two schools viewed the matter from two different angles one school of thought considered it advisable include as many rights as possible....., rights, in regard to which a citizen may without difficulty go straight way to court of law and get his rights enforced. The other school of thought considered it advisable to restrict fundamental rights to a few essential things that may be considered fundamental. Between the two schools there was a considered amount of discussion and finally a mean was drawn which was considered to be a very good mean" ³. The framers of the constitution also made it clear that there could be no other fundamental rights of the individual than those guaranteed by the Constitution of Part-III. Contrary to this the Ninth Amendment of the Constitution of United States provides that the 'enumeration of certain rights in the Constitution shall not construed to deny or disparage others retained by the people'. In the absence of such a provision in the Constitution of India, it is logical to sum up that there is no scope for the courts in India to formulate any more fundamental rights by the application of the doctrines of 'implied and inherit' rights of the individual.

The provisions of the Indian Constitution relating to right to equality prohibits all kinds of unjustified inequalities. The concept of equality is based on the principle of natural justice that all individuals should be treated alike. "In the context of social sciences, "the concept of equality refers sometime to certain properties when men are held to have in common but more often to certain treatments which men either receive or ought to receive" ⁴. The concept of equality is, infact, an indication of the fact that all men are ultimately equal. It is therefore, a noble ideal which provides

dignity to all individuals. Nonetheless, the concept does not necessarily denote that every one should be treated alike regardless of individual abilities. Absolute equality is, in fact, an impossibility and what equality really signifies is that among equals laws should be equal and equally administered also. It further denotes that every one who is classified as belonging to the same category, for a particular destination, is to be dealt within the same manner. The concept of equality is closely attached with the concept of justice. This is what the Supreme Court and the High Courts of India emphasize through their various judgements.

In the Constitution of India, Right to equality is provided under Article 14, 15, 16, 17 and 18. Article 14 lays down the General Rule which prohibits the state from denying any person equality before law or the equal protection of the laws, while succeeding Articles 15, 16, 17 and 18 provide particular applications of the Rule.

In the Constituent Assembly, provisions relating to right to equality were examined in considerable details. The Advisory Committee on Fundamental Rights dealt only with 'the equal treatment of laws' but added the 'due process' clause regarding the right to life and liberty⁵. The Drafting Committee substituted the term equality before law for equal treatment of law and added a new phrase, viz., 'equal protection of the laws'⁶. Originally in the Draft Constitution' the right to equality before law and the right to personal liberty were combined together in one article. But after the second reading stage decision was taken by the Constituent Assembly to provide equality before law in a separate article.

The Constitution advocates for the abolition of social disabilities. According to the Advisory Committee the state was not to discriminate against any citizen on the grounds only of religion, race, caste or sex with regard to trading establishments, or the use of wells, tanks, roads and places

of public resort which were maintained partially or wholly by Public Funds⁷. The Drafting Committee accepted these non-discriminatory provisions and added the words 'or any of them' to clear any doubtful or double meaning⁸. Mr. Rauf placed an amendment to add 'place of birth' in the non-discriminatory provisions which was also accepted by the committee.

Some of the members opposed detailed provisions for abolition of social disabilities which according to them could be removed sooner or later by social reforms. Prof. Saxena considered it essential to 'prepare the ground' to give effect to these changes by the Constitution by name⁹. "However, majority of the members were in support of embodying these provisions in the Constitution".

Somnath Lahiri pointed out that there should be no discrimination either on social grounds of political beliefs and faiths. Hence he thought an amendment wanted to add the words 'Political creeds' under the clause (4) of the Interim Report on Fundamental Rights which was not accepted.

The Advisory Committee accepted for equality of opportunity for all citizens in matters of public employment, in clause (5) of the Interim Report. It, therefore, maintained that no citizen was to be discriminated against in matters of Public employment on grounds only of religion, race, caste, sex, descent, place of birth or any of them except in the case of any section of society which was 'not adequately represented in the public services'. The state was authorised to legislate suitably to safeguard the interests of such sections of society. The Draft Committee passed these provisions and added the word 'backward' to signify that class of people which was not adequately represented in the Public Services¹⁰.

Some members were of the opinion that the term backward could not be defined in brief and this might create confusion¹¹. Aziz Ahmad Khan

wanted to drop the word “backward” altogether but Dharam Prakash was in favour of replacing the term “backward classes” by “depressed classes” or Scheduled Castes to make it more clear ¹².

On the other hand, Pt. H.N. Kunzru opposed to the principle of reservation of seats for backward classes in matters of public employment which according to him would lead to social disharmony¹³. He however suggested for a time limit for such reservations subject to further extension if the Parliament considered it desirable. Dr. B.R. Ambedkar while rejecting this proposal observed that it was a compromise formula of the three divergent views expressed by the members and the public at large in this connection. These were equality of opportunity for all ; no reservation of any kind for any section of the community and due representation to backward communities in administration. He, therefore, claimed that under such circumstances no better formula could be evolved and this as included in clause 3 of Article 10 of the Draft Constitution ¹⁴.

Although Advisory Committee had not prescribed residential qualification for public employment, the matter was raised in the Constituent Assembly. A.K. Ayyar wanted to insert a new clause which could empower Parliament to enact a law, if essential, for any state to limit a certain class of employment for the residents of that state ¹⁵. T.T. Krishnamachari, however, considered this suggestion as unnecessary ¹⁶. Dr. B.R. Ambedkar too did not like this idea. He observed : “the argument that residence should not be qualification to hold appointments under state is perfectly valid and a perfectly sound argument” ¹⁷.

Some members objected to the inclusion of the provision of abolition of untouchability in chapter dealing with fundamental rights. According to them it was a social evil and could not be removed through

Constitutional provision unless the caste-system itself was abolished ¹⁸. Dr. S.C. Banerjee observed that “untouchability was not a disease but a symptom of a disease, namely, caste system” ¹⁹. Moreover, there could be no appropriate definition of untouchability and according to D.N. Dutta “unless there is a definition it cannot be considered as an offence” ²⁰. Members like R.K. Choudhary and Naziruddin Ahmed vainly tried to define untouchability but their definitions could not be accepted by the House ²¹. Finally, the provision for the abolition of untouchability was carried through by the unanimous vote of the Constituent Assembly.

Likewise, titles were also abolished under clause 7 of the Interim Report on fundamental rights which provided that the Union Government was not to confer any ‘heritable title, nor was any person, “ holding any office of profit or trust” under the state to have any title from any alien state without the permission of the Government. However, in the Draft Constitution the qualifying word ‘heritable’ was dropped ²² and a saving clause ‘not being a military or academic distinction was added at the second reading stage ²³. Meanwhile, Balkrishna Sharma opposed abolition of titles on grounds of social tradition of the country and psychology of the people ²⁴. Another member Mr. Prakasa wanted distinction to be made between titles awarded by the state as by the public and titles awarded by the State should be abolished ²⁵. Furthermore, H.V. Kamath enquired from Dr. B.R. Ambedkar whether the abolition of titles was a justiciable right ²⁶. The latter replied in the negative and observed that in fact it was not a right but a duty upon an individual and a condition of combined citizenship by itself is not a justifiable right ²⁷.

(ii) CONCEPT OF EQUALITY:

Equality is one of the Human Rights, which was declared in order to maintain humanism in our society. The human rights are basic socio-political conditions to which every human being is entitled.

The concept of equality envisages the idea that all men are born free and equal, and there should be no discrimination on the basis of religion, race, caste, sex, colour or creed. Hon'ble Justice Mathew emphasised that the claim of equality is infact a protest against unjust, undeserved and unjustified inequalities. It is a symbol of man's revolt against chance, fortune, disparity , unjust power and crystalized privileges ²⁸.

The equality among men means that every citizen physically strong or weak, effective or non effective, rich or poor, is entitled to equal opportunities along with all other members of the society. In a broader perspective, equality as a principle of distributive justice amounts to no more than that men should all be treated in the same way save where there is a sufficient reason to treat them differently ²⁹. The value of equality demands the giving of favoured treatment to the deprived and the weaker sections of the society, to enable them to compete with fairness with advanced members of the society. The equality infact, involves an equilibrium creating or equilibrium oriented compensatory discrimination. It takes into account social economic and educational inequalities by affirmative actions ³⁰. Equality helps in promoting brotherhood among human beings and it protects status and dignity of all men. It is the foundation of sociolistic democracy based on secularism. It requires the state to take action legislative, judicial or administrative to provide protection to weaker sections of the society.

Equality as an aspect of justice has two phases namely, equality as a means of doing justice and equality as an end of justice. One may accept

the notion of equality, social economic and political as an end of justice. However, it is not practicable to accept the notion of equality without 'protective discrimination'. There are various synonyms used for protective discrimination in legal literature they are, "reservation", 'quotas', "compensatory treatment" or "preferential treatment" and "adventitious aids" etc. Protective discrimination is a means of doing justice. The road to distributive justice is a two lane highway – one requiring the equal treatment of the equals and the other requiring the unequal treatment of unequals ³¹. In order to discover substance of distributive justice, it is necessary to establish a body of rights and duties and then to examine them in the light of the formal principle of equality, the aim being to exclude every form of invidious discrimination not justified by relevant differences.

The doctrine of equality envisages the idea of protective discrimination in all its manifestations. The notion of protective discrimination aims at unequal treatment of unequals ie., those who were the victims of man made asperities for centuries together now need to be compensated . Mere proclamation of abstract equality will be of no use to such persons groaning under the object poverty and the deadening weightage of backwardness. They need 'protective discrimination' or 'adventitious aids' to develop their personality and to participate in the mainstream of national life, the way, the constitution, vouchsafes and ordains for them.

It is the legitimate aspiration of citizens in a welfare state that good education and the security of job should be provided to all of them. If no protective discrimination is given to the weaker sections in the matters of education and employment they will remain as they were and our professions of distributive justice will be a dream and a teeming illusion to be vainly pursued in an agnoising atmosphere of inequality ridden society.

However the pursuit for equality and distributive justice has often led to conflicts between the guaranteed individual rights and social justice to people belonging to backward classes and weaker sections of the society while the guaranteed fundamental rights are enforceable, the claim to social justice by the members of the backward classes and weaker sections is not enforceable as such, unless the state passes a law in that direction, since the constitution authorises the state to make preferences for them. While the state action in implementing the preferential schemes have to encouraged, it has also be seen that in the exercise of the powers, the government does not abuse or misuse its power, so as to impair the interest of others. The government has to perform a formidable task of balancing the competing claims of different sections of the society. The harmonisation is required to resolve this conflict between “need basic claims” of the backward groups to protective discrimination and the rights of the members of the advanced sections to which they became entitled because of their ‘performances, contribution and merit’. The court also perform a tremendous task in ensuring that the protective discrimination is confined strictly to constitutionally permissible objectives and of over-seeing that a balance is struck between the fundamental rights of the individual and social justice to the backward classes.

(iii) EQUALITY AS AN ASPECT OF DISTRIBUTIVE JUSTICE:

The concept of equality envisages the idea that all men are born free and equal, and that there should be no discrimination on the basis of religion, race, sex, caste, colour or creed. It is a *sin quo non* for the effective exercise of rights guaranteed in the constitution. “The more equal are the social rights of the citizens” says Laski, “the more likely they are to be able to utilize their freedom in realms worthy of exploration. Certainly, the history of the abolition of special privileges has been, also, the history of

the expansion of what in our heritage was open to the common man. The more equality there is in a state, the more use, in general, we can make our freedom”³².

The word ‘equality’ is incapable of single definition as in its ambit it is multi-dimensional. It is a comprehensive concept having many shades and connotations and it has no one common attributive. Attempts to identify such attributes are likely to lead to for – ranging discussions – discussions of the relations between equality and justice and between equality and liberty,³³ and these are mainly the problems of distributive justice.

The term equality is undefinable since it can only be realised and understood in contra-distinction with inequality. It would be correct and reasonable to say that men ought to be treated unequally, because they are of unequal rank, circumstances, ability and race. Equality can only be achieved when we have a social order which is based on the identity of interests, roles, power and authority in different sectors of human life³⁴. According to Friedmann :

*It is clear, however, that the principle of absolute equality between individuals of all classes and races cannot be understood in a rigid sense... .. it means the abolition not of natural differences, which it is not within men's power to abolish, but of man made differences inherit in the organisation of the society It is these which is the task of law, in democratic societies, to remove*³⁵.

The principle of formal equality proclaims that each man to count for one and no one to count for more than once. But men are not equal in

all respects. "The claims for equality is in a fact a protect against unjust, undeserved and unjustified inequalities. It is a man's revolt against chance, fortuitous disparity, unjust power and crystalized privileges"³⁶. The equality in physical sense to achieve physical equality, we often have to resort to the principal of proportional equality which speaks for the treatment of equals equally and unequals unequally proportional equality demands that all would receive the same consideration in the distributional decisions, but the numerical amounts distributed may differ. Proportional equality thus means equality in the distribution according to merit or need. In the words of Mathew J :

*So interpreted, it does not imply that men are identical or equal in intelligence, strength, talent or many other respects. As a normal principle, its meaning might be summed up in this way: human beings are entitled to treated as if they are equal on all matters important to them and matters really important to them are matters that are common to men*³⁷.

Rashdall was of the opinion that the principle does not require that every person be given an equal share of wealth or of political power, but rather equal consideration in the distribution of ultimate good ³⁸. The equality of men means that every citizen, of whatever capacity, is entitled to equal consideration from all members of society. Physically strong or weak, effective or non-effective, rich or poor, he is to be regarded as deserving such opportunities of self-development as he is capable of grasping, or even share protection and sustenance if he is incapable through natural defects or undeserved misfortunes, of maintaining any foot hold for himself in society.

In a broader perspective, equality as a principle of distributive justice amounts to no more than that men should all be treated in the same way save where there is a sufficient reason to treat them differently. But this version of equality seems to leave open what is to count as a sufficient reason and all kind of invidious distinction could make entry that way ³⁹. However, the belief in this aspect of equality of equality, viz., one man should not be preferred to another without sufficient reason, is a deep rooted principle of human thought. Like other ends, it cannot itself be defended or justified for it is itself that which justifies other acts ⁴⁰. Plato's remarks about law is equally applicable to the concept of equality that "a perfectly simple principle can never be applied to a state of things which is the reverse of the simple" ⁴¹. Aristotle observed that the origin of all quarrels and complaints, can be traced to the fact that the doctrine of proportional equality has been violated, as when equals have been or are awarded unequal shares, or unequal equal shares. He maintained that awards should be made according to merit, but, there is no consensus as to what constitutes merit. The differential treatment would be unjustified, if the persons concerned are not distinguishable because in such cases the equals would be treated unequally which will be tantamount to the principle of proportional equality. The doctrine of differential treatment has been expounded by Rousseau thus "it is precisely because the force of circumstances tends to destroy equality that force of legislation must always tend to maintain it" ⁴².

John Rawls in "A Theory of Justice" demands the priority of equality in a distributive sense and setting up of the social system so that no one gains or loses from his arbitrary place in the distribution of natural assets or his own initial position in the society without giving or receiving compensatory advantages in return. His basic principle of justice is " "All

social primary goods – liberty and opportunity, income and wealth, and the basis of self- respect are to be distributed equally unless an unequal distribution of any or all of these goods is to the advantage of least favoured”. One of the essential element of Rawl’s conception of justice is what he calls the principle of redress. This is the principle that undeserved inequalities call for redress ; and since inequalities of birth and natural endowment are undeserved , those inequalities are somehow to be compensated for society must, therefore, treat more favourably those with fewer native assets and those borne into less favourably social positions. Thus, the Rawl’s Theory of Justice and Redress Principle furnish an answer to the problem that “Equality of opportunity must yield Equality of Results”⁴³.

In a society, the individuals possess certain needs in common, thus they are to be treated equally until and unless those needs are minimally met. In this context, Laski maintains :

Equality, therefore involves upto the margin of sufficiency identity of response to primary needs. And that is what is meant by justice we are rendering to each man his own by giving him what enables him to be man we are, of course, therein, protecting the weak and limiting the power of the strong. We so act because the common welfare includes the welfare of the weak as well as of strong... This involves a payment by society to men and women who limp after its vanguard, the equality of state depends on its regarding their lives worth preserving. To act otherwise is to regard them not as person but as instrument ⁴⁴.

The value of equality demands the giving of favoured treatment to the deprived and the weaker sections of the society, to enable to compete with fairness with the well-to-do and more advanced members of the society. Thus, the measures which are designed to promote an effective equality by giving preferential treatment to the unequals and to make them equals cannot be different from the distributive justice.

The equality in fact, therefore, involves an 'equilibrium creating' or equilibrium orientated, compensatory discrimination"⁴⁵. The compensatory discrimination notion takes into account social, economic and educational inequalities and seeks the elimination of the existing inequalities by affirmative actions. This policy is justified because unequal characters of human beings are not as a result of innate superiority or inferiority, but of unequal environment into which men are born and have to live. If the inequalities in their environment are removed or eliminated, there will be a greater chance to attain a stage of real and effective equality ⁴⁶. The call of the moral perspective of equality value is : "Equals must be treated equally. Unequals must be treated unequally, not to perpetuate the existing inequalities but to achieve and maintain a real state of effective equality" ⁴⁷.

The Indian Society is a caste-ridden and economically imbalanced society. The strictness of caste barriers from centuries together has led to the social isolation and economic oppression of a section of society to their misery and penury. The doctrine of social equality would be meaningful in the Indian society only if 'protective discrimination' or 'initial advantage' or 'privilege' is given as an equaliser to those who are too weak, socially, economically and educationally to avail the advantage of guaranteed freedoms on the footing of equality. It demands equality in fact, which alone can be the basis for social equality. The Indian Constitution makers

did provide both these doctrines to impart distributive justice to its citizens. Dr. B.R. Ambedkar had rightly pointed out in the Constituent Assembly ⁴⁸:

A similar opinion has been expressed by Mr. Justice Subha Rao. According to him the concept of equality “in practice can only be worked out by accepting two principles “ (I) to give equal opportunity to every citizen of India, to develop his own personality in the way he seeks to do ; and (ii) to give adventitious aids to the under-privileged to face boldly the competition of life. Though these two principles appear to be conflicting but the harmonious blending of both give equal opportunities to all citizens to work out their way of life. Doctrinaire insistence of an abstract equality of opportunity leads in practice to inequality which the doctrine seeks to abolish ⁴⁹.

The Indian society is traditionally caste ridden and caste oriented. It thrives on numerous factors grounded essentially inequality. Therefore, equality in fact, can be realised by treating on the one hand, the ‘forward classes’ and the ‘under privileged classes’, differently. In other words , it is a device of ‘protective discrimination’ or adventitious aid’ in the favour of the latter which alone can equate them with the former. On the other hand, it requires the removal of all social evil or factors perpetrating social inequality to attain and make the goal of distributive justice a living reality.

(iv) PRINCIPLE OF EQUALITY UNDER THE CONSTITUTION:

Article 14 of the Constitution provides that the state shall not deny to any person equality before the law or equal protection of law within the territory of India. The spirit behind this Article is undoubtedly to secure to all persons, citizens or non-citizens, the equality of status and of opportunity referred to in the glorious preamble of the constitution.

Equality before law is a negative concept which ensure that there is no special privilege in favour of any one, that all are equal subject to the ordinary law of land and that no person, whatever, be his rank or condition, is above the law.

The concept, equal protection of laws is a positive concept. It postulates for the application of the same law alike and without discrimination to all persons similarly situated ⁵⁰. It denotes equality of treatment in equal circumstances. It implies that among equals the law should be equal and equally administered, that the like should be alike without distinction of race, religion, wealth social status or political influence.

(v) REASONABLE CLASSIFICATION AND NOT CLASS DISTINCTION:

All persons are not equal by nature, attainment or circumstances. The varying needs of different classes or sections of people require differential and separate treatment. The state is required to deal with diverse problems arising out of an infinite variety of human relations. It must, therefore, necessarily have the power of making laws to attain particular ends or objects and for that purpose of distinguishing, selecting and classifying persons and things upon which laws are to operate ⁵¹. The state can make reasonable classification in making legislation. The doctrine of classification is only a subsidiary rule evolved by the courts to give a practical content to the guarantee under Article 14, by accomodating it with the practical needs of the society⁵².

The classification should rest on real and substantial criteria and should be supported by an intelligible object intended to be pursued by the legislature. The legislature should neither treat unequals as equals, nor equals unequals without any rhyme or reason or intelligible purposive

difference, relatable to the legislative purpose spelled out by it. The doctrine of classification should not be allowed to eat up the doctrine of equality. Neither the courts nor the legislature should make anxious and vigorous effort to discover, somehow, somewhere the basis for classification just to get the enactment declared as constitutional. The protection of equal laws should not be allowed to be replaced by the protection of law making reasonable classification, otherwise the guarantee of equality may be replaced by over worked methodology of classification.

The Supreme Court has laid down the following principles which should be kept in mind by the Judges while deciding the Constitutional Validity of laws in reference to Article 14 of the Constitution:

- (I) that the law may be constitutional even though it relates to a single individual or institution ⁵³ if on account of some special circumstances or reasons applicable to him only.**
- (II) That there is always a presumption in favour of the constitutionality of the enactment.**
- (III) That it must be presumed that the legislature understands and correctly appreciates the need of its own people and that its discriminations are based on adequate grounds ; and**
- (IV) That while good faith and knowledge of the existing conditions on the part of the legislature [?] are to be presumed, it cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation ⁵⁴.**

These very principles have constantly been followed by the Supreme Court whenever it is called upon to adjudge the constitutionality of any particular law as discriminatory and violative of Article 14 of the Constitution ⁵⁵. The classification necessarily implies the making of a distinction or discrimination between classified and those who are not members of that class ⁵⁶. Indeed, the very idea of classification speaks of inequality. In making classification, the legislature must seek to implement the good of the largest possible number of people, must implement the Directives, must take into consideration the history, social change, economic and industrial developmental factors and the like. The basis of classification can be provided by its appreciation of the needs of different sections of the people and the true nature and effect of the given legislation, ⁵⁷ sociological and economic factors, experience relating to the problems facing them, geographical conditions ⁵⁸ historical factors ⁵⁹ and the economic size and importance of industrial, business or banking units, etc. ⁶⁰.

In order to know the intention of the legislature in enacting an Act, the recital in the statutory preamble, the thrust of the legislative provisions, surrounding circumstances, ⁶¹ the report of the proceedings, debates in the Houses, ⁶² and the whole background perspective must be looked into. The State can fix a cut-off date for making differentiation ⁶³ but such a cut-off date should have reasonable nexus with the objects sought to be achieved ⁶⁴.

The state can fix different minimum wages for different industries keeping in view the different economic and local conditions⁶⁵. The State can make laws discriminating in its favour ⁶⁶. The state can also make provisions for the segregation of prisoners under death sentence from other

prisoners⁶⁷. State can give different treatment to persons belonging to same class on basis of educational qualification⁶⁸ but cannot prescribe quota between graduates and non graduates in promotions⁶⁹.

(vi) JUDICIAL INTERPRETATION OF EQUALITY BEFORE LAW :

Article 14 of the Constitution says that the state shall not deny to any person equality before the law or the equal protection of the law within the territory of India. The first expression 'equality before the law' is taken from the English common law which is a declaration of equality of all persons within the territory of India, implying thereby the absence of any special privilege in favour of any individual. No man is above law. Every person whatever be his rank or condition, is subjected to the jurisdiction of ordinary courts. The second expression 'the equal protection of the laws', which is rather a corollary of the first expression is based on the last clause of the first section of the 14th Amendment to the American Constitution, which directs that equal protection shall be secured to all persons within the territorial jurisdiction of the Union in the enjoyment of their rights and privileges without favouritism or discrimination.

Thus Article 14 uses two expressions to make the concept of equal treatment a binding principle of state action. It will be difficult to imagine any violation of the expression, "the equal protection of the laws", which would also be a violation of the expression, 'equality before the law'. Equality before the law is a negative concept ; Equal protection of law is a positive one. The former declares that everyone is equal before law, that no one can claim special privileges and that all classes are equally subjected to the ordinary law of the land : the latter postulates equal protection of all alike in the same situation and under like circumstances. No discrimination can be made either in the privileges conferred or in the liabilities imposed

The guiding principle of the Article is that all persons and things circumstanced shall be treated alike both in privileges conferred and liabilities imposed ⁷¹. "Equality before the law" means that amongst equals the law should be equal and should be equally administered and that like should be treated alike ⁷². Hence, what it forbids is discrimination between persons who are substantially in similar circumstances or conditions. Unequal treatment does not arise as between persons governed by different conditions and different set of circumstances. The rule is that like should be treated alike and not that unlike should be treated alike.

This article applies to any person and is not limited to citizens alone. A corporation, which is a juristic persons, will also be entitled to the benefit of this Article ⁷³. It is accepted that persons may be classified into groups and such groups may be differently be treated if there is a reasonable basis for such difference or distinction. Article 14 forbids class legislation, but does not forbid classification or differentiation which rests upon reasonable grounds of distinction. It does not prohibit legislation which is limited either in objects to which it is directed or by the territory within which it is to operate. The rule of differentiation is that in enacting laws differentiating between different persons or things in different circumstances which govern one set of persons or objects so that the question of unequal treatment does not really arise between persons governed by different conditions and different set of circumstances. The principle of equality does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstances in the same position and the varying needs of different classes of persons require different treatment. The rule of classification is not a logical and natural corollary of the rule of equality, but the rule of differentiation is inherent in the concept of equality ⁷⁴. The equal protection

of the laws guaranteed by Article 14 does not mean that all the laws must be general in character and universal in application and that the state is no longer to have the power of distinguishing and classifying persons or things for the purposes of legislation ⁷⁵.

A classification to be valid must not be arbitrary. It should always rest upon some real and substantial distinction bearing reasonable and just relation to the needs in respect of which the classification is made. In order to pass the test of permissible classification two conditions must be fulfilled:

- 1) **The classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group. And**
- 2) **The differentia must have a rational relation to the object sought to be achieved by the statute in question.**

The object of classification should also be lawful. Classification must be made in the utmost good faith: Classifications that are scientific and rational, that will have direct and reasonable relation sought to be achieved yet can be bad because despite all that the object itself cannot be allowed on the ground that it offends the letter and spirit of Article 14. In such a case, the object itself must be struck down and not the mere classification which, after all, is only a means of attaining the desired end

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CHAPTER V (B)
CONSTITUTIONAL PROVISIONS AGAINST DISCRIMINATION
ON GROUNDS OF RELIGION, RACE, CASTE, SEX OR PLACE OF
BIRTH

The Constitution of India devotes a separate Article for preventing any kind of discrimination on grounds of religion, race, caste, sex or place of birth or any of them. Article 15 of the Constitution consists of four clauses out of which first two provide against discrimination on grounds of religion, race, caste, sex or place of birth in different spheres and the rest deals with the exceptions to which the main provision will not apply originally to this article had only three clauses and the state was permitted to make special provision for women and children. Meanwhile the Supreme Court declared “the Madras Communal Government Order” as ultra vires in **The State of Madras v. Champakam Dorai Rajan** case as it violated the provision under clause 1 of the Article 15¹. This judgement of the Supreme Court resulted in the First Amendment Act of 1951 which added clause 4 in Article 15. This new clause had practically cooled down the spirit of the Article itself since right to equality cannot prevent state to make special provision for the advancement of any socially and educationally backward classes. In a caste-ridden society like India Classes have been identified with castes, subcastes and communities. On the importance of caste system in India J.H. Morris Jones has significantly remarked “caste (or sub caste or communities) is the core of traditional politics. To it belongs a complete social ethos. It embraces all and is all embracing. Every man is born into particular caste or group and within it

inherits a place and situation in the society for which his whole behaviour and outlook in ideas, at least to be derived ².

Article 15 of the Constitution ³ lays down:

- “(1) The state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place or birth or any of them.**
- (2) No citizen shall on grounds only of religion, race, caste, sex, place of birth or any of them be subject to any disability liability, restriction or condition with regard to—**
 - (a) access to shops, public restaurants, hotels and places of public entertainment or**
 - (b) the use of wells, tanks bathing ghats, roads and places of public resort maintained wholly or partly out of state funds or dedicated to the use of the general public**
- (3) Nothing in this article shall prevent the state making any provision for women and children.**
- (4) Nothing in this Article shall prevent the state from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.”**

Clause 2 of Article 29 provides that “No citizen shall be denied admission to any educational institution maintained by the state or receiving and out of state funds on grounds only of religion, race, caste, language or any of them.” Here the word ‘state’ in relation to Fundamental Rights connotes “the Government and Parliament of India and the Government and the legislature of each of the states and all local or other authorities within the territory of India or under the Control of the Government of India” ⁴.

The word 'discrimination' according to the Oxford Dictionary means to 'make an adverse distinction with regard to or distinguish unfavourably from others'. The prohibited discrimination under Article 15 of the Constitution is limited to specific grounds, eg., religion, race, caste, sex or place of birth. Any discrimination other than those mentioned above has to be viewed under the general Article i.e., Article 14, if it is consistent and reasonable or not. If it is to be found that it is inconsistent and unreasonable with the demands of the changed situation than Article 14 prohibits it.

Protective discrimination is a concept and device which is used for the eradication of present institutionalized effects of the past discriminations, through positive governmental steps awarding preferential treatment in favour of certain weaker sections of the society. Article 15(3) and (4) of the Constitution provides for such protective discrimination. These provisions empower the state to make enactments favouring vulnerable sections of the society.

The notion of protective discrimination aims at unequal treatment of unequals i.e., those who were the victims of man made asperities for centuries together now need to be compensated. Mere proclamation of abstract equality will be of no use to such persons groaning under the weight of object poverty and deadening influence of backwardness. They need 'protective discrimination' or 'adventitious aids' to develop their personality and to participate in the mainstream of national life, the way, the Constitution vouchsafes and ordains for them⁵.

The rationale behind preferential treatment of town-trodden and backward classes has very succinctly been pointed out by Justice Sabha Rao; In the race of life, unless adventitious aids are given to the under-privileged people, it would be impossible to suggest that they have equal

opportunities with the more advanced people. This is the reason and the justification for the demand of social justice that the under-privileged citizens of the country should be given a preferential treatment in order to give them an equal opportunity with other more advanced sections of the community ⁶.

Protective discrimination aims to be used as an effective measure and balancing wheel between haves and have-nots. It does not rob Peter to give it to Paul, nor does it aim to pull down the advanced sections of the society but only to uplift the backward sections, thereof, without unduly and unreasonably affecting the interests of the former ⁷.

Protective discrimination intends to direct and empower the state to make special measures for the advantage of the weaker sections. The equality clause aspires to see that backward classes should not remain backward, but must come to the level with the advanced sections of the society. Protective discrimination is a condition precedent for stabilization and strength of the society. It ensures that unequals are not treated as equals ⁸.

A perusal of Article 15 reveals that whereas its first clause specifies various prohibitory grounds for the state within its competence, the second clause restraints both the state and the private individual who may be in control of the public places, as mentioned in the clause concerned. But the third clause provides special power to state to protect women and children. And a special clause four has been added to Article 15 by the 1st. Amendment Act, 1951, so as to provide particular attention to socially and educationally backward classes.

Discrimination is prohibited against any citizens on grounds only of religion, race, caste, sex, place of birth or any of them. It is, however,

permitted in favour of women and children for obvious reasons, and special provision may be lawfully made for them. This is quite in accordance with the basic purposes of Constitution as outlined in its preamble, and also follows as an essential corollary to the principle of secular democracy.

Article 15 is only meant for Indian citizens, Resident aliens in India do not come within its scope ⁹. However this may not deter others from pointing out to the court when they are directly affected (or prosecuted) that the law in question is void under the Constitution ¹⁰. Then can, in their defence, plead the law to be void under Article 15, but they cannot enforce a fundamental right under that article ¹¹. In United States of America persons other than discriminated against can raise the question of validity of statute or law ¹². But in India only the affected persons under Article 32, can move to the Supreme Court ¹³.

(i) JUDICIAL INTERPRETATION OF ARTICLE 15(4):

Clause 4 of Article 15 is not the original provision of Constitution. It was inserted according to section 2 of the Constitution (First Amendment Act) in 1951 ¹⁴. The Judgement of the Supreme Court in **Champakam Dorairajan Case** and the **State of Madras v. C.R.I Srinivasan** ¹⁵ necessitated ¹⁶ such amendment. The details of the two noted cases are as follows:

There were four medical colleges in the state of Madras with 330 total number of seats out of which 29 were reserved to S/C's and S/T's and the rest were apportioned among four distinct communities, likewise out of 395 total seats of four engineering colleges 33 were reserved and rest were apportioned district wise among the different communities of the state. Before the commencement of the Constitution these seats were filled up according to the Communal Government Order community wise and also district wise which are as follows:

Non Brahmin (Hindus) 6, Backward Hindus-2, Brahmins -2, Harijans-2, Anglo Indian and Indian Christians-1 and Muslims-1.

The Candidates for admission were selected on the basis of marks obtained at the last examination but within the community of the district concerned.

The Communal Government Order was challenged in the Madras High Court on the ground of being contrary under Article 29(2) 14 and 15(1) of the Constitution through two writ petitions moved separately on behalf of Champakam Dorairajan a protective candidate for admission in medical college and C.R. Srinivasan who had actually applied for the admission in an Engineering college. The Madras High Court allowed both writ petitions and issued writ of mandamus accordingly. The state of Madras filed appeal in Supreme Court against the two identical judgements of Madras High Court which had quashed the Communal Government Order. The Supreme Court also dismissed both the appeals and held the Communal Governmental Order as violation of Article 29(2) of the Constitution. Justice S.R. Das interpreted clause (1) and (2) of Article 29 as thus :

"It will be noticed that while clause (1) protects the language, script or culture of a section of the citizens, clause (2) guarantees the fundamental right of an individual citizen. The right to get admission into any educational institution of the kind mentioned in clause(2) is the right which an individual has as a citizen and not as a member of any community or class of citizens. This right is not to be denied to the citizens on the grounds only of religion, race, caste, language or any of them.

If a citizen who seeks admission into any such educational institution has not the requisite academic qualifications and is denied admission on the ground he certainly cannot be heard to complain of an infraction of his Fundamental Right under this article. But on the other hand, if he has the academic qualifications but is refused admission only on ground of religion, race, caste, language or any of them, then there is a clear breach of his fundamental right”.

The judgement of the Supreme Court was exclusively based on clause (2) of Article 29 which provides that “No citizen shall be denied admission to any educational institution maintained by the state or receiving aid out of state funds on grounds only of religion, race, caste, language of them ¹⁷. The contention of the petitioner that the Communal Government Order was in conformity with Article 46 of part IV according to which “The state shall promote with special case the educational and economic interests of the weaker sections of the people.....” was not accepted and the Supreme Court significantly observed:

“So long as there is no infringement of any Fundamental Right there can be no objection to state acting in accordance with the Directive Principles subject of course to the legislation and executive powers conferred or the state under different provisions of the Constitution. But the chapter on Fundamental Rights is sacrosanct and is not liable to be abridged by any legislative or executive act, except to the extent provided in part III. Hence in case of conflicts between the Directive Principles and the Fundamental Rights the former have to conform to and run as subsidiary to the chapter on Fundamental Rights”.

The Supreme Court had also not accepted the plea that the Communal Government Order was constitutional and valid under clause (4) of Article 16 which empowers the state to make any provision for the reservation of appointment or part in favour of any backward class of citizens. On the other hand it maintained that "the omission of a provision corresponding to Article 16(4) in Article 29 is significant. The reservation for backward classes which was thought necessary for their protection in the matter of appointment was not considered necessary in the matter of admission into educational institutions or aided by the state. Hence seats in such institutions cannot be allotted according to religion, caste or language and a person who is denied admission only on such grounds is entitled to relief from the court".

Justice Das in his judgement elaborated the facts of case in considerable detail and observed:

"Take the case of the petitioner Srinivasan. It is not disputed that he secured a much larger number of marks than the marks secured by many of the Non-Brahmin Candidates and yet the Non-Brahmin Candidate who secured less number of marks will be admitted into six out of every 14 seats but the petitioner Srinivasan will not be admitted into any of them. What is the reason for this denial of admission except that he is a Brahmin and not a non-Brahmin. He may have secured higher marks than the Anglo-Indian and Indian Christian (S/C) or Muslim Candidate but, nevertheless, he cannot get any of the seats reserved for the last mentioned communities for no fault of his except that he is a Brahmin and not a member of the aforesaid communities. Such denial of admission cannot but be regarded as made on ground only of his caste".

"It is argued that the petitioners are not denied admission only because they are Brahmins but for a variety of reason eg., (a) they are

Brahmins (b) Brahmins have an allotment of only two seats out of 14 and (c) the two seats have already been filled up by meritorious Brahmin candidate. This may be true so far as these two reserved for the Brahmins are concerned but this line of argument can have no force when we come to consider the seats reserved for candidates of other communities, for, so far as those seats are considered, the petitioners are denied admission into any of them not on any ground other than the sole ground of their being Brahmins and not being members of the community for whom these reservations been made. The classification in the Communal G.O. proceeds on the basis of religion, race and caste. In our view, the classification made in the Communal G.O. is opposed to the Constitution and constitutes a clear violation of the Fundamental Rights guaranteed to the citizen under Article 29(2). In this view of the matter, we do not find it necessary to consider the effect of Article 14 or 15 on the specific articles discussed above.

“For the reason stated above, we are of the opinion that the Communal G.O. being inconsistent with the provisions of Article 29(2) in Part III of the Constitution is void under Article 13”.

As a result of above judgements the Constitution was amended for the 1st. Time in 1951 and clause 4 was added under Article 15 according to which nothing in Article 15 or in clause (2) of Article 29” shall prevent the state making any special provision for the advancement of any socially and educationally backward classes of citizens or of Scheduled Castes and Scheduled Tribes”. As a matter of fact, when Article 9 of the Draft Constitution was under the consideration of the Constituent Assembly Prof. K.T. Shah through this amendment on 29.11.1948 observed that at the end of clause (2) of Article 9, the following be added:-

“or for Scheduled Castes or backward tribes’ for their advantage, safeguard of betterment”.

Dr. B.R. Ambedkar opposed the amendment claiming that it might “have just the opposite effect”.

“The object” he continued ¹⁸ “which all of us have in mind is that the Scheduled Castes and the Scheduled Tribes” should not be segregated from the general public. For instance none of us I think, would like that a separate school should be establish for the Scheduled Castes when there is a general school in the village open to the children of the entire community. If these words are added, it probably give a handle for a state to say, “well we are making special provision for the Scheduled Caste. To my mind they can safely say so by taking shelter under the article if it is amended in the manner the professor wants it. I, therefore, think that it is not a desirable amendment”.

(ii) ARTICLE 15(4) AND LAND MARK JUDICIAL PRONOUNCEMENTS :

The Madras Communal Government Order was again subjected to judicial review in **Katraman v. state of Madras** ¹⁹. This time also the Supreme Court declared it beyond the jurisdiction of Article 16(4). In **S. Gurumukh Singh v. Union of India and others** ²⁰ the Constitution Scheduled Castes Order, 1950 issued by the President under Article 341(1) was questioned as discriminatory. The said order notified 34 different castes of the Punjab to be scheduled castes. Para 3 of the order stated that no person who professes a religion other than Hinduism shall be deemed to be a member of Scheduled Castes. Gurumukh Singh was a Bawaria Sikh and he claimed that discrimination on the ground of religion rendered the order ultra vires. On exception to this was inclusion of the castes viz. , Ramdasis, Kabir, Panthis, Mezhabis and Skligars which comprised of both Hindu and Sikhs.

The Supreme Court observed that clause (4) of Article 15 and Article 341 were exceptions to the general rule laid down in 15(1). The power of the President under Article 341 of the Constitution in selecting a caste, or even a group within a caste for special treatment is within his competence. Thus if the President selected four castes and further selected groups within thereby castes in Punjab for their inclusion in the list of Scheduled Castes, it was within the scope of this power and this right of pick and choose was not contrary to the provision of Article 15(1) as regulated by Article 15(4). The court has no authority to go into the question whether a group within a caste is actually backward or not.

On the other hand the court in **Jagwant Kaur Kasar Singh Dang and other v. State of Bombay** ²¹, declared the order passed under Bombay Land Requisition Act 33 of 1948 requisitioning land for a Harijan Colony as violation of Article 15(1). Since part IV of the Constitution was subsidiary to part III the provision for promoting educational and economic interest of scheduled castes, scheduled tribes and other weaker sections does not permit the state to make discrimination in favour of scheduled castes in utter violation of Article 15(1). But with the insertion of clause (4) in Article 15 the state can build a Harijan Colony in order to advance the interest of Backward Classes of citizens, or Scheduled castes or Scheduled Tribes as a whole. The Court, however, held that Constitution of a colony only for Harijans was discriminatory as these were other backward classes of citizens too.

Likewise, the Madras Education Rules 92 was challenged in the court of law in **Re Thomas by Father and Natural Guardian S. Masilamans v. State of Madras** ²² case. Appendix 17 of the said Rule provided a list of Scheduled Castes which included only those who were either themselves or their fathers or natural guardians were converts.

Thomas, a Christian convert boy did not come under the category of Scheduled Castes as only his grandfather was a convert. The court held that concessions cannot be demanded as a matter of right and if under 15(4) special encouragement was given to backward classes and the Government sought to include among them only a particular category of Harijan convert boys and not others, court cannot question it. If the Government made some allowances to recent converts only the petitioner could not claim for the same. He could not be treated as a recent convert. Since his grandfather was converted to christianity and thus case of discrimination could not be made out.

The underlying question before the Supreme Court in **Principal, Guntur Medical College, Guntur and others v. Y. Mohan Rai** ²³ was: whether a person whose parents belonged to the Scheduled caste before their conversion to christianity could after regarded as a member of the Scheduled Castes so as to be eligible for the benefit of reservation of seats for Scheduled castes in the matter of admission to a medical college.

The Supreme Court was of the opinion that a person whose parents belonged to a Scheduled Caste before their conversion to Christianity can, on conversion or re-conversion to Hinduism, be regarded as a member of the Scheduled Caste only if he is accepted as a member of the Scheduled Caste only if he is accepted as a member of that caste by the other members of the caste. On such acceptance he would be eligible for the benefit of reservation of seats for Scheduled Castes in matter of admission to a medical college.

“In the words of Justice Bhagwati, “It will, therefore, be seen that on conversion to Hinduism, a person born of Christian converts would not become a member of the caste to which his parents belonged prior to their conversion to Christianity, automatically or as a matter of course, but he

would become such member, if the other members of the caste accept him as a member and admit him within the fold” ²⁴. “ It is for the member of the caste to decide whether or not to admit a person within the caste. Since the caste is a social combination of persons governed by its rules and regulations, it may, if its rules and regulations so provide admit a new member just as it may expel an existing member” ²⁵.

In **Puppala Sudarsan v. State of A.P.** ²⁶ the court of Andhra Pradesh posited that the Fundamental Right of a citizen whether he belonged to a backward community or not, was to secure admission to any educational institution run by the state without his being discriminated on grounds on only of religion, race, caste, or any of them. The state may, in exercises of the powers under article 15(4) direct that certain percentage in each faculty of educational institutions should be reserved for candidates from backward classes without injuring to students of other communities.

In **Ramakrishana Singh Ram Singh v. State of Mysore**, ²⁷ the notification of the Government of Mysore which provided for reservation of a certain percentage of seats in medical colleges to certain classes on grounds of social and educational backwardness was challenged as infringing Article 15(4). The list of backward classes was prepared on the basis of consensus Report of 1941 which included 95% of the total population of the state and only a few castes and communities were left out. The Mysore High Court was of the opinion that determination of backward classes was not based on intelligible principle since it deprived only a few castes and communities from the benefit of reservation of seats in the medical colleges. The court held it more discriminatory against those castes and communities than a provision for the backward classes. More over, it was a provision not for socially and educationally backward classes, but for the classes who were comparatively backward to the most forward

classes. Therefore, the court could not justify the notification of the Government under Article 15(4) and held it void.

In **State of U.P. and others v. Pradip Tondon and others**²⁸, the main question for consideration was whether the instructions framed by the state in making reservations in favour of candidates from Rural Areas, Hill Areas and Uttarakhand were constitutionally valid ? These reservations were made by the state Government for admission of students to medical colleges in the state of U.P.

The contention on behalf of the state was that the reservations for rural, hill and Uttarakhand areas were for socially and educationally backward classes. It was further argued that these reservations on geographical or territorial basis were also valid. The Judgement of the Court was delivered by the Chief Justice A.N. Roy. It was submitted that the Hill and Uttarakhand areas in U.P. were instances of socially and educationally backward classes of citizens. Backwardness is judged by the economic basis that each region has its own measurable possibilities for the maintenance of human members. The people in the Hill and Uttarakhand areas were educationally backward classes of citizens because lack of educational facilities kept them stagnant and they had neither meaning and values nor awareness for education. Where the people have traditionally apathy for education owing to social and environmental conditions or occupational handicaps, it is an example of educational backwardness. The Hill and Uttarakhand areas were inaccessible. There was lack of educational institutions and educational aids.

It was held that the reservation for rural areas could not be sustained on the basis that the rural areas represented socially and educationally backward classes of citizens. This reservation was made for the majority population of the state 80% of the population in the state of U.P. in rural

areas cannot be a 'homogeneous class' by itself. Their occupation and standards were different. Population cannot be a class by itself. Rural element does not make it a class. The special need for medical men in rural area would not make the people in the rural areas socially and educationally backward classes of citizens. "Poverty in rural areas cannot also be the basis of classification to support reservation for rural area. Poverty is found in all parts of India" ²⁹. The Supreme Court further maintained that the reservation of the ground of place of birth violate Article 15. So the reservation of seats for candidates from rural areas was unconstitutional on this ground also because the incident of birth in rural areas was made the basic qualification. The Supreme Court finally held that "the reservations for the Hill and Uttarakhand areas are severable and these are valid" ³⁰.

The judgement of the Supreme Court in **Balaji V. States of Mysore** ³¹ was a landmark so far as the interpretation of clause 4 of Article 15 is concerned, the fact involved in the case was that the Mysore Government by an order reserved 28%, 22%, 15%, and 3% of the total seats in medical and engineering college respectively for backward class, more backward classes, Scheduled castes and Scheduled Tribes. The Supreme Court held that this classification was solely based on caste considerations and thus void which interpreting Article 15(4) the Court laid down the following propositions.

- (a) The backwardness under Article 15(4) must be social and educational.
- (b) The group of citizen to whom Article 15(4) applies are described as classes of citizens not as castes of citizens. In dealing with the question as to whether any class of citizens is socially backward or not, it may not be irrelevant to consider the caste of a group of citizens. Though the caste of group of citizens may be relevant its importance not be exaggerated ³².

(c) The Sub-classification into backward and more backward classes does not appears to be justified under Article 15(4) and is not warranted by the provisions of Article 15(4) ³³.

(d) That the provision authorised to be made under Article 15(4) is a special provision ³⁴.

The Supreme Court also maintained that in laying down principal for the determination of backward class but also the removal of Causes. which led to the growth of backward should also be taken into consideration. Justice Gajendra gadkar was of the opinion that backwardness contemplated under article 15 (4) must be social and education.

Article 15(4) authorises the state to make special Provision for the advancement of socially and educationally backward classes of citizens or for the Scheduled Castes of citizens or for the scheduled classes of citizens or for the Scheduled Castes and Scheduled Tribes³⁵. But Constitution does not define socially and educationally backward classes of citizens. Therefore, when the question arises whether a particular provision made by the state is valid under Article 15(4) or not, the questions to be determined whether the state has validly determined who should be included in backward class. The Supreme Court held the view that the backward classes, for whom important special provision is contemplated by Article 15(4) should be in the matter of their backwardness comparable to the Scheduled Castes and Scheduled Tribes.

According to the Court, social backwardness was the result of poverty ³⁶ place of habitation of a community of persons ³⁷, place of habitations of a community of persons ³⁸ in the society. The problem of rural India is such that certain classes of citizens in rural area really socially backward ward and would fall with in the purview of Article 15(4).

As regard the educational backwardness the court observed that the state average of student population should be taken as a test for determining the educational backwardness of a community or castes. A community or caste which confronts to such as average cannot be regarded as educationally backward classes of citizens. The Supreme Court further held that a caste or community the average of student population of which is less than 50% of the State average should be included in the list of educationally backward classes.

In **Chitralekha v. State of Mysore** ³⁹, the Supreme Court did not lay down any new proposition as to how a state make a special provision under Article 15(4). This clause explained the earlier decision of the Supreme Court in **Balaji v. State of Mysore** ⁴⁰. The Supreme Court held that a special provision made for backward classes would be valid under Article 15(4) irrespective of the fact that caste had not been taken into consideration in determining the socially and educationally backward classes.

In the two cases, namely, **P. Rajendran and others v. State of Madras and others** ⁴¹ and **State of A.P. and another v. P. Sagar** ⁴² decided by the Supreme Court, in 1968 it laid down new propositions as to how a list of backward classes could be prepared having consistency with the provisions of Article 15. In both cases the Supreme Court took the view that a socially and educationally backward classes could be prepared having consistency with the provisions of Article 15. In both the cases the Supreme Court took the view that a list of socially and educationally backward classes could be specified by castes provided that the list was not based on caste alone. In the latter case, the Supreme Court took the view that, when a question arose whether a law which prima facie infringed a guaranteed Fundamental Right is within an exception, the court could call

for materials to satisfy itself that the law was validly made and falls within the exception.

The question here, to be examined is to how far the proposition laid down by the Supreme Court in the above two cases that a list of socially and educationally backward classes could be caste wise or community wise is consonant with the propositions laid down in the earlier decisions of the Supreme Court in the cases, namely, **Balaji v. State of Mysore** and **Chitralekha v. State of Mysore**. It was held in **P. Rajendran and others** that a caste was a class of citizens and if the caste as a whole was socially and educationally backward, reservation could be made in favour of such a caste on the ground that it was a socially and educationally backward class of citizens within the meaning of Article 15(4).

The next question is related to the effect of the Principles enunciated in **P. Rajendran and others v. State of Madras and others**, and **State of A.P. and another v. P. Sagar**. It may be that there are castes whose members as a whole are socially and educationally backward. As there will be classes of persons who are socially and educationally backward but such classes may not fall within any caste or community. If the list of socially and educationally backward classes can be made caste wise or community wise it will definitely leave out the above two categories. Persons who are socially and educationally backward but do not belong to a caste or community whose members as a whole are socially and educationally backward and also persons who are socially and educationally backward but do not come within any caste or community will be left out of the protection given under Article 15(4) similarly it should not be forgotten that if a list of socially and educationally backward class of persons is drawn caste wise or community wise for giving protection under Article 15, it will only perpetuate the caste system and will hinder the movement towards

an egalitarian society, which is the objective of the Constitution makers to achieve. Therefore, although the principles laid down by the Supreme Court in **P. Rajendran and others v. State of Madras and state of A.P. and another v. P. Sagar** are not inconsistent with the principles for determining educationally and socially backward classes for the purpose of Article 15(4) so that no one who is socially and educationally backward is left out of the protection under Article 15 that is to say the very concept of equality.

The facts of the case in **Kumari Jayashree v. State of Kerala**⁴³ in brief were as follows:

The petitioner applied for admission to the M.B.B.S. Course for 1975-76 in one of the Medical Colleges of Trivandrum in the State of Kerala, clause 9 Sub Clause (iv) of the prospectus for admission provided among other things that the applicant should produce certificate of community and income (from all sources) in the prescribed form in the case of candidates belonging to the communities recognised by the Government as socially and educationally backward classes. The petitioner produced the certificate from the Tahsildar, claiming that the total income of the family from all sources was Rs. 11,752 for the year 1975-76 and that she was an Ezhava.

Moreover, the minimum marks prescribed for candidates belonging to Ezhava community in the state was 363 in the optional subjects of Physics, Chemistry and Biology. The Petitioner obtained 372 marks. The Petitioner alleged that the list of candidates belonging to the Ezhava/Thiyya Community selected for the seats reserved for them under Article 15(4) of the Constitution was published on 10 October, 1975 and the petitioner was not selected though candidates belonging to Ezhava community who had obtained less marks than the petitioner had been selected. The petitioner

further alleged that the list showed that candidates Nos. 6 to 27 obtained marks ranging between 371 and 357. The Principal Medical College communicated to the petitioner that, as her income exceeds Rs. 10,000 her case could not be considered under reservation scheme.

On 2 May, 1966 the state Government issued an order *inter alia*, that only applicants belonging to Ezhavas, whose aggregate annual income was below Rs. 6,000 could be entitled for admission to the seats reserved for students belonging to the socially and educationally backward class.

The said order of the Government was challenged in the Kerala High Court. The learned Judge quashed the Government Order by decision dated 24 February, 1975 reported in AIR 1975 Kerala, p.131. The state filed an appeal. The validity of the Government Order dated 2 May, 1966 was upheld by the Kerala High Court. The decision of the High Court dated July, 1975, reversing the judgement of the learned Judge is reported in **State of Kerala v. Krishna Kumar** ⁴⁴. The High Court held that “economic backwardness plays a part in social and educational backwardness. Poverty or economic standards is a relevant factor. Economic backwardness contributes to social backwardness”⁴⁵.

The petitioners contented that there are no reason to exclude an insignificant part of the community on the basis of income alone. The petitioner laid emphasis on the fact that if the socially and educationally backward classes were set out in the annexure, income cannot be the criterion of admission to determine the benefit of Article 15(4).

The contention of the state was that the Government Order dated May 2, 1966 was not in a violation of Article 15(4) because the expression “backward class” in Article 15(4) is not used as synonymous, with backward caste or backward community. The members of an entire caste or community may in social, economic and educational scale of values, at a

given time be backward and may on that account be treated as a backward class. The reason is that they were treated as socially and educationally backward not because they were members of a caste or community but because they formed a class.

The court held that ‘in ascertaining social backwardness of a class of citizens it may not be irrelevant to consider the caste of the group of citizens. Caste cannot, however be made the sole or dominant test. Social backwardness is the ultimate analysis the result of poverty to a large extent. Social backwardness which results from poverty is likely to aggravated by considerations of their caste. This shows the relevance of both caste and poverty in determining the backwardness of citizens. Poverty by itself is not the determining factor of social backwardness. Poverty is relevant in the context of social backwardness’⁴⁶.

The Court further held that “the problem of determining who are Socially and educationally backward classes is undoubtedly not simple. Sociological and economic consideration come into play in evolving criteria for its determination.”⁴⁷ This is the function of the state. The Courts Jurisdiction is to decide whether the tests applied are valid. If it appears that tests applied are proper and valid the classification of socially and educationally backward classes based on the tests will have to be consistent with the requirements of Article 15(4)⁴⁸.

In A. Periakaruppan V. State of Tamil Nadu⁴⁹ The Supreme Court held that

The classification of backward classes on basis of Caste is well within the purview of Article 15(4) provided that these castes are shown to be Socially and educationally backward. Reservation of seats should not be allowed to become vested interest. The Government decision in this regard is open to judicial review.

In **State of A.P V. US. V. Balaram**⁵⁰, the supreme Court Reiterated and said that sole test for ascertaining whether a particular class is backward or not, yet if an entire caste, as a fact, found to be socially and educationally backward classes by their name is not violative of Article 15(4). If once a class appears to have been reached a stage of progress from which it could be safely inferred that no further protection is necessary the state will also do well to review such instances and suitably revise the list of backward classes.

In **Arti V. State of J & k**⁵¹, the Supreme Court held that the classification made for rectification of regional imbalance without identification of the areas suffering from imbalance was vague and arbitrary and therefore violative of Article 15(4) of the constitution. It was held that there was no material before classifying villages as socially and educationally backward areas and hence the classification was arbitrary and Unconstitutional.

Similarly in **Suneel Jatley V. state of Haryana**⁵², It was held that the reservation of Seats of admission to M.B.B.S and B.D.S course for students Who received education from class I to VIII in Common rural area Schools was held to be violation of Article 15(4).

In **Padmraj Samarendra V. State**,⁵³ the Patna High Court upheld the reservation of 'Cultural Seats' for the admission to the Medical College.

In **State of M.P V. Nivedita Jain**⁵⁴, The Supreme Court upheld the Validity of an Executive order of the state Government which had completely relaxed minimum qualifying mark in pre-medical examination for selection of students of medical Colleges of the state in Scheduled Caste and Scheduled Tribes Candidates the High Court struck down the order as violation of Article 15(4) on appeal, the Supreme Court held that the regulation relating to condition to minimum qualifying marks was merely

directory and not mandatory and hence the executive order completely relaxing the minimum qualifying and Article 15(4). Under this Article ,the state is obliged to do every thing possible for the upliftment of the Scheduled Castes and Scheduled Tribes and other backward communities and is entitled to make reservation for them. In the absence of any law to the contrary , it is open to the Government to impose such condition as would make the reservation effective.

In **Amalendu Kumar V. State of Bihar** ⁵⁵, the Patna High Court held that the reduction of qualifying marks in favour of Scheduled caste and Scheduled Tribes by an executive order on the ground that the seats reserved for these categories would remain Unfilled was violative of Article 15(1).

In **Dr. Neelima v. Dean of P.G. Studies A.P. Agriculture University Hyderabad**, ⁵⁶ it has been held that a high caste girl marrying a boy belonging to Scheduled Tribe is not entitled to the benefit of reservation available to schedule tribes. The appellant was born in Reddy Caste which is a forward class and married to a Erukala Tribe boy one of the Scheduled Tribe in the state of Andhra Pradesh. After marriage she sought admission to M.Sc. Course in the Agriculture University Hyderabad under reservation quote for Scheduled Tribes. The court held that she was not entitled to get the benefit of reservation available to the Scheduled Tribes.

In a significant judgement ⁵⁷ a five Judges bench of the Supreme Court has held that a person belonging to Scheduled Caste or Scheduled Tribe, bearing the same name in two state is entitled to the rights and privileges and benefits only in the State of his origin and not be available to him after he migrates to other states though they are specified in the SC and ST list of that state. The Court said:

“Coincidentally it may be that a caste or tribe bearing the same name is specified into two states but the consideration on the basis of which they have been specified may be totally different”.

This is clear from the language used in Article 341 and 342 of the constitution. These very Articles clearly state that the President may specify the caste or tribes as the case may be, in relation to each state or Union Territory for the purposes of the Constitution. Besides, before specifying the castes or tribes under either of the two articles the President, is obliged to consult the Governor of that state. Therefore when a class is specified by the President, after consulting the Governor of the state, it is difficult to understand how that specification made “in relation to that state” can be treated as specification in relation to any other state whose Governor the President has not consulted.

In **Anil Kumar Gupta v. State of U.P.**⁵⁸, the validity of reservations to medical courses, for the year 1994-95 made by U.P. Government was challenged on the ground that it was contrary to the decision of the Supreme Court in **Indira Sawhney v. Union of India**. As a result of the above reservation policy 60% of seats were reserved in favour of various classes/ categories leaving only 35% for open competition category. The reservation provided in the policy was as follows (1) Backward classes 27% (2) Hill Region 3% (3) Uttarakhand Region 3% (4) Scheduled Castes 21% (5) Scheduled Tribes 2% (6) Real dependent of freedom fighters 5% (7) Son/Daughter of soldier died in war/handicapped soldiers 2% (8) For handicapped candidates 2% total 65%.

A further reservation of 30% in favour of women was also provided in each of the following above categories. Pending the petition of the Govt. modified the reservation policy and horizontal reservation was provided in

all medical colleges on total seats of all courses. It was provided that the reservation for (1) Real dependents of freedom fighters 5% (2) Sons/Daughters of deceased /disabled soldiers 2% (3) Physically handicapped candidates 2% (4) Candidates belonging to hill areas 3% (5) Candidates belonging to Uttarakhand areas – would be horizontal and the candidates of these categories selected on the basis of merit would be kept under categories of SC's/ST's other backward classes categories to which they belong. The reservation in favour of women was removed from all reserved categories. Later a corrigendum was also issued stating that the reservation in favour the above five categories shall be horizontal and not vertical reservations. It was also clarified that if any candidate belonging to SC/ST's are OBC categories is selected in open competition on the basis of merit, then he will not be adjusted in seats for categories concerned. The court held that the horizontal reservation of 15% seats for special categories was excessive and has resulted in reduction of seats available for open categories. A separate horizontal reservation of 6% and 15% for special categories, i.e. candidates of hill areas and Uttarakhand apart from and in addition to 27% reservation of OBC's is clearly illegal. The reservation for these categories be treated as that in Article 15(4) of the Constitution and not under Article 15(1), i.e., they are reservation in favour of society and educationally backward proper and correct course for filling the seats is to first fill up the open category quota (50%) on the basis merit and then fill up each of the special reservation quota i.e., SC, ST and BC, and third step should be to find out how many candidates belonging to special reservations have been selected on the above basis. If the fixed quota for horizontal reservation is already satisfied no further question arises. But if it is not so satisfied, the requisite number of special reservation candidates shall have to be taken and adjusted/accommodated against their respective social

reservation categories deleting the corresponding number of candidates there from. Despite the aforesaid errors in the rule of reservation the court held that it was not advisable to interfere with the admissions already finalised. The method laid down by the Courts is more for the purpose of future guidance for the respondents. To rectify the injustice done to the open competition candidates in the admissions the court directed that in the matter of admissions made to CPMT – 1994 while the admissions already finalised shall not be disturbed. The U.P. Government to create 34 additional seats in the MBBS Course and admit from the open category against those seats. If any seat are vacant on the date of the present judgement they shall also be filled from the open category alone. This criterion of additional seat is confined to current session only.

Thus the cases examined above establish the principles in which classification of backward classes is currently being made may result in denial of equality. This is due to the fact that socially and educationally backward classes have not been well defined in the constitution. Dr. B.R. Ambedkar observed in the Constituent Assembly:

*“Somebody asked me, ‘what is a backward community?’ Well, I think, any one who reads the language of the draft will find that we have left it to be determined by each local government. A backward community is a community which is backward in the opinion of the Government”*⁵⁹. Thus, since the State Government have the power to classify the “socially and educationally backward classes’ the classification must be arbitrary and deprive the genuinely socially and educationally backward classes of the benefit of Article 15(4). It is therefore suggested that these classes be defined precisely

notwithstanding the fact that judicially review acts as a check on arbitrary classifications”.

(iii) RESERVATION FOR SC's, ST's AND OBC IN SUPER SPECIALITY COURSES:

In a significant judgement, the Supreme Court has ruled that merit alone can be the criteria for selecting students to super specially courses in medical and engineering. “At the level of admission to the super speciality courses, no special provisions are permissible ⁶⁰.”

The Supreme Court has placed the national interest above social and other interests in ruling that special provisions like reservation for SC's ST's or other backward classes (OBC's) were not permissible in admissions to super speciality courses in medical and engineering. Merit alone can be basis of selection ⁶¹.

The Supreme Court's pronouncement followed a batch of petitions challenging the Uttar Pradesh Post Graduate Medical education (Reservation for Scheduled Castes, Scheduled Tribes and other Backward Classes) Act and a Madhya Pradesh Government order that had lowered the cut of percentage for reserved category candidate to appear in Post Graduate Medical Entrance examination.

By a 4:1 majority, the court held there cannot be a wide disparity between the minimum qualifying marks prescribed for the general and reserved category even for admission to the Post Graduate level in medicine. The court said, ‘Admission to the highest “valuable medical courses in the country at the super speciality levels, where facilities for training are limited, must be given only on the basis of competitive. There can be no relaxation at this level”.

The court directed the Medical Council of India (MCI) to examine whether minimum qualifying marks for the reserved category candidates could be prescribed Post Graduate medical courses. The Bench comprising Chief Justice Adarsh Sein Anand, Justice S.B. Magimdar, Justice Sajata v. Monohar, Justice K. Venkataswami and Justice V.N. Khare disposed of a batch of appeals, writ petitions and review petitions concerning admissions to medical and engineering courses in various states.

The Court struck down the Uttar Pradesh Post Graduate Medical Education (Reservation for Scheduled Castes, Scheduled Tribes and other Backward Classes) Act, 1997, which reduced the minimum qualifying marks from 35 to 20% for reserved category candidates for admission to post graduate medical course. It also struck down the Madhya Pradesh Government order of June 7, 1997, prescribing minimum qualifying marks for the reserved categories. The court also disapproved the disparity in qualifying marks for the general and reserved categories. It said that the percentages of 20 for the reserved category and 45 for the general category are not permissible under Article 15(4), the same being unreasonable at the post graduate level and contrary to national interest".

"The marks cannot be lowered further for admission to post graduate medical courses, especially when at the super speciality level it is the unanimous view of all then judgements of this court that there should be no reservations." The court added. The court however, pending consideration of the question of qualifying marks for admission to post graduate medical courses by the MCI, UP and MP governments may follow the norms laid down by the MCI for lowering of marks for admission to undergraduate MBBS course as a temporary measure.

Thus it is clear that the purpose of reservation was to ensure that reserved category candidate with the requisite training and calibre to

benefit from post graduate medical courses and rise to the expected standards were denied this opportunity by making them compete with general category candidate. The court explained. "The general category do not have any social disabilities which prevent them from giving their best. The special opportunities which are provided to those who are substantially below the levels prescribed for general category candidates, it said. It would not be possible for such candidate to fully benefit from the very limited and specialised post graduate training opportunities.

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CHAPTER- V (C)

EQUALITY OF OPPORTUNITY IN MATTERS OF PUBLIC EMPLOYMENT

Equality of opportunity in matters of Public employment may be regarded as an important right of citizens in a democracy to create a social order in social economic and political justice is attained for all. The Constitution of India provides this right under Article 16 which contain five clauses. The first two clauses lay emphasis on equality of opportunity in matters of employment without any discrimination on grounds of religion, race, caste, sex, descent, place of birth or residence. Other clauses however, provide certain exceptions to which equality of opportunity for all citizens shall not apply. The different clauses of Article 16 are as follow:¹

- “(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state”.**
- (2) No citizens shall, only of religion, race, caste, sex descent, place of birth , residence or any of them be ineligible for , or discriminated against in respect of, any employment of office under the state.”**
- (3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office , ¹ (under the Government of or, any local or other authority within state or Union Territory, any requirement as to residence within that state or Union Territory) prior to such employment or appointment”.**

- (3) **Nothing in this article shall prevent the state from making an provision for the reservation of appointments or posts in favour of any backward class of citizens, which in the opinion of the state, is not adequately represented in the services under the state”.**
- (4) **Nothing in this article shall effect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religion or denominational institution or any member of the governing body there of shall be a person professing a particular denomination”.**

Prior to the enactment of the Constitution, equality of opportunity in matters of public employment was guaranteed under section 278 and 298(i) of the Government of India Act, 1955. Sec.275 laid down that “A person shall not be disqualified by sex for being appointed to any civil service or civil post under the crown in India” Section 298 (i) further provided that “ No subject of his Majesty domiciled in India shall on grounds of religion, place of birth, descent, colour or any of them be ineligible for office under the crown in India”.

In this connection reference ³ may also be made to Article 335 of the Constitution that runs as follows:

“The claims of the members of the Scheduled Castes and the Scheduled Tribes shall taken into consideration consistently with the maintenance of efficiency of administration in making of appointments to services and services and posts in connection with the affairs of the Union of a state ”. ⁴

The main aims of the above mentioned clauses is to provide equality of opportunity to each and every citizen of India in matters of public employment, irrespective of his, religion, race, caste, sex or place of birth. No discrimination is ordinarily permissible on ground of residence but Parliament may frame a law under clause 16(3) providing for residential qualification as essential for certain types of appointment in the clause concerned. The word residence in clause (2) and clause (3) was inserted in Article 16 by the constituent Assembly on November 30, 1948 through an amendment based on the motion of Yaspat Roy Kapoor and views expressed by K.M.Munshi and Alladikrishna Swami Ayyar ⁵. While insisting for insertion of the word residence in clause[2] of Article 16 Kapoor observed that his object was to ensure that "every citizen of the country, wherever He might be living should have" an "equal opportunity of employment under the state.....Anywhere in the country", .And that "there being only one citizenship of the whole country it should carry with it the unfettered right and privelege of employment in any part and in every nook and corner of the country"⁶.

Unluckily , he proceeded, "for sometime past we have been observing that provincialism has been growing in this country. Every now and then we hear the cry, "Bengal for Bengalis" 'Madras for Madras' and so on so forth. This cry is not in the interest of the unity of the country or in the interests of the solidarity of the country..... I can easily understand a Provincial Government laying it down as a rule that only those who possess adequate knowledge of the provincial language shall be eligible for employment in the province. I can also understand..... a rule being laid down that a person who wants employment in the province should have adequate knowledge of the local conditions..... All that is easily understandable in the interests of the efficiency of the services..... I,

therefore submit that in the matter of employment there should be absolutely no restriction whatsoever unless it is necessary in the interests of the efficiency of the services..... The unity of the country must be preserved at all costs..... We must do everything in our power to preserve the unity of the country, and the amendment that I have moved aims at this and is a step in this direction”.

Dr. B.R. Ambedkar while accepting the motion of Kapoor as amended by K.M. Munshi and Alladi Krishna Swami Ayyar significantly observed:

“It is the feeling of many persons in this House that, since we have established a common citizenship through out India, irrespective of the local jurisdiction of the provinces and the Indian states, it is only a concomitant thing that residence should not be required for holding a particular post in a particular state because, in so far as you make residence a qualification, you are really subtracting from the value of a common citizenship which we have established by this Constitution or which we propose to establish by this Constitution. Therefore, in my judgement, the argument that the residence should not be a qualification to hold appointments under the state is a perfectly sound argument. At the same time, it must be realised that You cannot allow people who are flying from person to another, from one state to another, as mere birds of passage without any roots, without any connection with that particular province, just to come, apply for posts and so to say, take the plums and walks away.

Therefore, some limitation is necessary. It was found, when this matter was investigated, that already today in very many provinces rules have been framed by the provincial governments prescribing a certain period of residence as a qualification for a post in that particular province. Therefore, the proposal in the amendment that, although as a general rule residence should not be a qualification, yet some exception might be made, is not quite out of the ordinary. We are merely following the practice which has been already established in the various provinces. However, what we found was while different provinces were laying down a certain period as qualifying period for posts, the period varied considerably. Some provinces said that a person must be actually domiciled what that means, one does not know. Others have fixed ten years, some seven and so on. It was, therefore, felt that while it might be desirable to fix a period as a qualifying test, that qualifying test should be uniform throughout India. Consequently, if object is to be achieved, viz., that the qualifying residential period should be uniform, that object can be achieved only by giving the power to the parliament and not giving it to the local units, whether provinces or state. That is the underlying purpose of this amendment putting down residence as a qualification”.

(i) JUDICIAL INTERPRETATION OF ARTICLE 16(4):

Article 16(4) is an exception to the general rule embodied in Article 16(1) and 16(2). It expressly permits the state to make

provision for the reservation of appointments or posts in favour of any backward classes of citizens which are not adequately represented in the services under the state. The power conferred can only be exercised in favour of the backward classes. The state has to decide which particular class of citizens is backward. In order to apply Article 16(4) two conditions must be satisfied:

- 1) **There must be a class of citizens which is backward both socially and educationally. That backward class must not be adequately represented in the services under the state.**
- 2) **While ascertaining whether a particular class is a backward class or not the principle laid down in *M.R. Balaji v. State of Mysore* will apply ⁷.**

The expression “backward class of citizens” under Article 16(4) is vague and may lead to a lot of confusion. Some members of the Constituent Assembly also observed that in the absence of a clear definition “the term backward class of citizens” might be subjected to different interpretations and might “lead to lot of litigation” ⁸. Dr. B.R. Ambedkar however did not agree with them when he said: ⁹

“My honourable friend, M.T.T. Krishnamachari asked me whether this rule will be justiceable. It is rather difficult to give a dogmatic answer”. Personally, I think it would be a justiceable matter. If the local Government included in this category of reservations such a large number of seats, I think one could very well go to the Federal Court and the Supreme Court and say that the reservation is a such a magnitude that the rule regarding equality of opportunity has been destroyed and the court will then come to the conclusion whether the local Government or the State Government

has acted in a reasonable and prudent manner". One can hardly agree with this view of Dr. B.R. Ambedkar. In fact, in the absence of any definite criteria for judging the backwardness of a class of citizens, one fails to see. How the court of law can help in this matter. As a matter of fact, there will be no precise and unchanging, yardstick for judges to act upon in this matter. Consequently, the interpretation of Article 16(4) will vary from case to case and the judges will have wide discretion while applying it.

However, Dr. B.R. Ambedkar while replying to the debate in the Constituent Assembly made the forthcoming observation: ¹⁰

"I should like to begin by making some general observations so the members might be in a position to understand the exact import, the significance and the necessity for using the word 'backward' in this particular clause... .. There are three points of view which it is necessary for us to reconcile. If we are to produce a workable proposition which will be accepted by all, of the three points of view, the first is that there should be equality of opportunity for all citizens. It is the desire of many members of this house that every individual who is qualified for a particular post should be free to apply for that post, to sit for examinations and to have his qualification tested so as to determine whether he is fit for the post or not and there ought to be no limitations, there ought to be no hindrance in the operation of this principle of equality of opportunity. Another view mostly shared by a section of the House is that, if this principle is to be operative and it ought to be operative in their

judgement to its fullest extent there ought to be no reservations of any sort for any class or community at all, that all citizens, if they are qualified, should be placed on the same footing of equality so far as the public services are concerned. That is the second point of view we have. Then we have quite massive opinion which insists that, although theoretically it is good to have the principle that there shall be equality of opportunity, there must at the same time be a provision made for the entry of certain communities which have so far been outside the administration... .. The Drafting Committee had to produce a formula which would reconcile these three points of view”.

Moreover, he gave the following explanation for inserting the term “backward class of citizens”. If honorable members will bear these facts in mind – the three principles, we had to reconcile, - they will see that no better formula could be produced than the one that is embodied in such clause (3) of Article 10 of the Constitution, ¹¹ they will find that the view of those who believe and hold that there shall be equality of opportunity, has been embodied in sub-clause (1) ¹² of Article 10. It is a genetic principle. At the same time, as I said, we had to reconcile this formula with the demand made by certain communities that the administration which now – for historical reasons – been controlled by one community or a few communities, that situations should disappear and that the others also must have an opportunity of getting into the public services. Suppose, for instance, we were to concede in full the demand of those communities who have not been so far employed in the public services to the fullest

extent. What would really happen is, we shall be completely destroying the first preposition upon which we are all agreed, namely that there shall be an equality of opportunity..... Therefore, the seats (posts ?) to be reserved, if the reservation is to be consistent with sub clause (1) ¹³ of Article 10, must be confined to a minority of seats (posts ?). It is then only that the 1st. Principle could find its place in the Constitution and (be) effective in operation. If honorable members understand this namely, the principle of equality of opportunity and at the same satisfy the demand of communities which have not so far representation in the state, then, I am sure they will agree that unless you use some such qualifying phrases as 'backward', the exception made in favour of reservation will ultimately eat up the rule altogether. Nothing in this rule will remain. That I think, if I am to say so, is the justification why the Drafting Committee under look on its own shoulders the responsibility of introducing the word 'backward', which, I admit did not originally find a place in the fundamental right in the way which it was passed by this Assembly..... I think this is, sufficient to justify why the word "backward" has been used," ¹⁴.

This is quite evident from the above statement of the Chairman of the Drafting Committee that clause (4) of Article 16 of the Constitution which corresponds to clause (3) of Article 10 of the Draft Constitution in a sort of compromise between the demand for the reservation of posts in the services of the state in favour of certain communities which are not adequately represented in state services owing to their social, educational, economic and political backwardness.

However, it must be mentioned here that, although the reservation of posts in favour of 'backward classes' of citizens is constitutionally permissible, the state cannot reserve any post or appointment on religious or communal grounds, except as allowed for the Anglo-Indian community under Article 336 of the Constitution for a short period. This principle was clearly laid down by the Supreme Court in **Venkataramana v. State of Madras** ¹⁵. The facts of the case were as follows:

"The Madras Public Service Commission by a notification dated December 16, 1949 invited applications for 83 posts of District Munsiffs under the Madras Subordinate Civil Judicial Service out of which 12 were to be filled up by those already working in the Madras Civil Judicial Department and for the rest direct recruitment were to be made from among the official receivers, Assistant Public Prosecutors and Practicing members from that bars. It was further notified that selection of candidates were to be made on caste and communal basis in pursuance of the rules prescribed under Communal Government Order according to the following ratio:

Harijan – 19, Muslim-5, Christians-6, Backward Hindus-10, Non-Brahmin Hindus-32 and Brahmins-11.

Further more, different age limits were prescribed for communities other than Harijans and Backward Hindus and no age limit was fixed in the case of the latter. The petitioner Venkataraman would have been selected on the basis of marks secured by him in the competitive test but for the Communal Government Order he was denied appointment for the post of District Munsif. Consequently, he moved for the writ petition under Article 32 of the Constitution alleging infringement of his fundamental right to

equality in matters of employment and prayed for questioning the Communal Government Order as violation of the Constitution.

“The Constitution by Article 16, specifically provides for equality of opportunity in matters of public employment. The relevant clauses are as follows: ¹⁶ Clause(4) expressly permits the state to make provision for the reservation of appointments or posts in favour of any backward class of citizens which in the opinion of the state, is not adequately represented in the services of the state. Representation of posts in favour of any backward class of citizens cannot, therefore, be regarded as unconstitutional. The Communal Government Order itself makes an express reservation of seats for Harijans and Backward Hindus. The other categories, namely, Muslim, Christian, Non-Brahmin, Hindus and Brahmins must to taken to have been treated as other than Harijans and Backward Hindus. Our attention was drawn to a Schedule of Backward Classes set out in schedule III to Part-I of the Madras provincial and Subordinate Services Rules. It was therefore, argued that Backward Hindus would mean Hindus of any of the communities mentioned in the schedule. It is, in the circumstances, impossible to say that classes of people other than Harijans and Backward Hindus can be called Backward class. As regards the post reserved for Harijans and Backward Hindus. It may be said that the petitioner who does not belong to those two classes is regarded as intelligible for those reserved posts not on the ground of religion, race, caste etc., but because

of necessity for making a provision for reservation of such posts, in favour of a backward class of citizens but the ineligibility of petitioner for any of the posts reserved for community other than Harijans and Backward Hindus cannot be regarded as founded on the ground only of his being a Brahmin. For instance the petitioner may be for better qualified than a Muslim or a christian or a Non-Brahmin candidate and if all the posts reserved for those communities were open to him, he would be eligible for appointment, as is conceded by the learned Advocate – General of Madras, but, nevertheless, he cannot expect to get any of those posts reserved for those different categories only because he happens to be a Brahmin. His ineligibility for any of the posts reserved for the other communities, although he may have for better qualifications than those possessed by members falling within those categories, is brought about only because he is a Brahmin and does not belong to any of those categories. This ineligibility created by the Communal G.O., does not appear to us to be sanctified by Article 16(4) and it is an infringement of the fundamental right guaranteed to the petitioner as an individual citizen under Article 16(1) and (2). The Communal G.O. in our opinion, is repugnant to the provisions of Article 16 and is an such void and illegal We, therefore, direct the respondents to consider and dispose of the petitioner's application for the post after taking it on its merit and without

applying the rule of Communal rotation. The petitioner will be entitled to his costs of this application.

Likewise the scope of Article 16(4) was defined by the Madras High Court and the Supreme Court in the General Manager, **Southern Railway v. Rangachari** ¹⁷. According to this case the Railway Board reserved certain posts of selection grade in class III of the Railway Services for Scheduled Castes and the Scheduled Tribes. It issued a number of circular prescribing a quota of reservation in the above mentioned service with retrospective effect. The petitioner Rangachari was adversely affected by such sort of reservation and thus filed a writ petition in the Madras High Court which held the circulars of the Railway Board as infringement of Article 16(4).

The case come before the Supreme Court for hearing in the form of appeal and the majority judgement reserved the judgement of Madras High Court. The court come to the conclusion that the power of reservation conferred on the state under Article 16(4) were exercisable not only in the case of initial appointments but also in the case of selection grade.

On the other hand, the Supreme Court in **Devadasan v. Union of India** observed that reservations for backward communities should not interfere with the rights of the other communities ¹⁸. According to this right the Union Public Service Commission issued a notification regarding reservation of certain percentage of posts for Scheduled Castes and Scheduled Tribes. This notification was based on the resolution of the Ministry of Home Affairs described as the rule of “carry forward”, that is to say, that if a sufficient number of candidates of Scheduled Castes and Scheduled Tribes were not available for appointment to the reserved posts the vacancies were to be filled up by the general candidates. However, equivalent number of vacancies would be reserved in the following year of

Scheduled Castes and Scheduled Tribes in addition to their reserved quota of that year. However, the Supreme Court held that the rule of “carry forward” as unconstitutional. It observed that recruitment of each year must be considered by itself while making appointments, and reservation for a particular year should not be so excessive as to give monopoly to them over appointments and thereby interfere with the legitimate claims of other communities.

In **C.A. Rajendran v. Union of India** and others, it was stated that the official memorandum provided reservations for the Scheduled Castes and Scheduled Tribes only in class III and IV services and Government Servants belong to the Scheduled Castes and Scheduled Tribes were deprived of benefit of such reservations at the time of appointments for class I and II posts ¹⁹. It was alleged that the official memorandum was discriminatory and violated Article 16(4). The Supreme Court while dismissing the writ petition observed that Article 16(4) did not guarantee such right to the petitioner and there was no constitutional obligation on the part of the state to make reservation for the backward classes either at the initial stage or at the stage of promotion. More over, the claims of the members of Scheduled Castes and Scheduled Tribes should be taken into consideration to the extent which is consistent with the maintenance of efficiency in administration while making appointments to services and posts related to the affairs of the state.

Likewise, the distribution of posts to Muslims, Jammu Hindus and Kashmiri Hindus in the ratio of 50:40:10 by the Government of Jammu & Kashmir was challenged in **Triloki Nath v. State of Jammu and Kashmir**²⁰. The Supreme Court admitted the right of the state to make provision for reservation in favour of backward classes but mentioned that the distribution of total number of posts for appointment on the basis of

common unity or place of residence was against the constitutional guarantee under Article 16(2) and 16(4).

The Supreme Court declared that **Jammu and Kashmir Civil Services** (classification, control and Appeals) Rules, 1976 as ultra vires in **Janki Prasad Parimoo and others v. State of Jammu and Kashmir and others** ²¹ on the basis of judgement earlier pronounced by it in **Makhan Lal Waza v. State of Jammu and Kashmir** ²². The above said Rules provided reservation in favour of any backward class, which in the opinion of the Government, was not adequately represented in the service. Promotions were to be made on the basis of merit-cum-seniority. However, the state Government followed the communal pattern of appointments and promotions reserving 50% for Muslims, 40% for the Hindus of Jammu and remaining 10% for Kashmiri Pandits, Sikhs and other minority community. The Supreme Court while declaring the above said rules as unconstitutional made the following observation.

“Mere educational backwardness or the social backwardness which makes a class of citizens backward, the class identified as a class as above must be both educationally and socially backward”. Further, ‘backward classes must be comparable to Scheduled Castes and Scheduled Tribes’.

Likewise the Allahabad High Court declared the orders issued by the U.P. Government in 1955, 1958 and 1977 providing for reservation for backward classes in Government services as unconstitutional ²³. The facts of the case **Chottey Lal Pandey and others v. State of U.P.** are as follows: ²⁴

The Government of U.P. through its several order issued in 1955, 1958 and 1977 provided for reservation for the backward classes in Government services. According posts in the state (i) judicial services were

reserved for the backward class, dependents of freedom fighters as well as detenus of M.I.S.A. and D.I.R. and other dependents. A competitive examination was held in 1977 to fill up 150 posts in the Judicial Service out of which 23, 12, 8, 27 and 3 were reserved for backward classes, disabled officers of the armed forces, dependents of freedom fighters, Scheduled Castes and Scheduled Tribes respectively. Chottey Lal Pandey and six others who had appeared in that competitive examination challenged the orders of the State Government as violation of Article 16 in Allahabad High Court through a writ petition.

Two judges of the **Allahabad High Court viz., T.S. Misra and K.N. Goel** while declaring the orders of the State Government providing for reservations for backward classes in Government services as ultra vires observed.

“Having given our thoughtful consideration, we are driven to the irresistible conclusion that the Government orders dated September 6, 1955, September 17, 1958 and August 20, 1977 are a fraud on the Constitutional powers conferred on the State under Article 15(4) and 16(4) of the Constitution in the sense that the expression (backward classes) have been defined in the Balaji Sappu case and are, as such invalid”. They were however, of the opinion. “It will, of course, be open to the Government to pass fresh orders for reservation after identifying backward classes through proper investigation and inquiry”.

The Court did not agree with the definition of backward classes as given by the State Government which also included Adhirs and Kurmis and who were not economically and socially backward. As a matter of fact,

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a caste is considered backward class then should continue to backward for all time. The Government should review the list and if a class reaches the state of progress where reservation is not necessary it should delete of that class from the list of the backward classes ²⁶.

The power of reservation which is conferred on the state under Article 16(4) can be exercise by the state not only for providing reservation in appointment but also in selection posts ²⁷. Thus selection posts can also be reserved for backward classes. In matter of filling selection posts, the question of seniority is not relevant but selection, is made solely on merit basis ²⁸.

In **State of Kerala V.N.M. Thomas** ²⁹, the important question which come up was whether it was permissible to give preferential treatment to Scheduled Castes and Scheduled Tribes under Article 16(1) i.e., outside the exception of Article 16(4). A seven members bench of the Supreme Court by a majority of 5:2 held that the classification of employees belonging to Scheduled Castes and Scheduled Tribes for following them an extended period of 2 years for passing tests for promotion from other classes of employees was a just and reasonable classification because the temporary relaxation of test qualification to Scheduled Castes and Scheduled Tribes was warranted in view of their over all backwardness. Thus accordingly to the majority reservation for backward classes may be made even outside the scope of 16(4) and therefore rules and order were not violative of Article 14, and 16(2) and valid. This is the new interpretation of Article 16(1).

In **A.B.S.K. (Rly) v. Union of India** ³⁰, the Supreme Court following Thomas Case upheld the validity of the Railways Board Circular under which reservations were made in selection posts for Scheduled Castes and Scheduled Tribes candidates. The court held that under Article

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without application of means test. Another 15 years will it so from the commencement of the Constitution, a period which is reasonably long for these classes to overcome the baneful effects of social oppression, isolation and humiliation.

- (2) The means test is the test of economic backwardness which is ought to be applicable even to Scheduled Castes and Scheduled Tribes after 15 years (after 2000 A.D.)**
- (3) For other backward classes two tests should be satisfied:-**
 - (i) That they should be comparable to the Scheduled Castes and Scheduled Tribes in the matter of their backwardness.**
 - (ii) That they should satisfy the means test such as the state Government may lay down in the context of prevailing economic conditions.**
- (4) The policy of reservation in employment education and legislative institution should be reviewed every five years or so. This would afford an opportunity:-**
 - (i) to the state to rectify distortions arising out of particular fact.**

The scope and extent of Article 16(4) has been examined thoroughly by the Supreme Court in historic case of **Indira Sawhney v. Union of India** popularly known as **Mandal Case** ³³.

The facts of the case were as follows on January 1, 1979 the Government headed by the Prime Minister Sri Morarji Desai appointed the Second Backward Classes Commission under Article 340 of the Constitution under the Chairmanship of Shri B.P. Mandal to investigate the socially and educationally backward classes within the territory of India and recommend steps to be taken for their advancement including desirability for making provisions for the reservation of seats for them in

government jobs. The Commission submitted its report in December 1980.

It had identified as

Many as 3,743 castes as socially and educationally backward classes and Recommended for reservation of 27% government jobs for them. In the meantime the Janata Government collapsed due to internal dissention and the Congress Party headed by the Prime Minister Smt. Indira Gandhi come to Power at the centre . The Congress government did not implement the Mandal Commission Report until 1989. When the Congress Party was defeated in the Parliamentary elections and the Janata Dal again come into power and decided to implement the Commission's report as it had promised to the electorate. Accordingly the Government of India, headed by the Prime Minister Shri V.P Singh issued the Office Memoranda (called

O.M) on August 13, 1990, reserving 27% seat for backward Classes in government Services on the basic of recommendations of the Mandal Commission . the acceptance of the Report of the Mandal Commission threw the nation into turmoil and a violent anti -reservation movement which rocked the whole nation for nearly three months resulting in huge loss of property and persons ³⁴.

A writ petition on behalf of the Supreme Court Bar Association was filed challenging the validity of the office memoranda and for staying this operation. In her petition, Ms. Indira Sawhney submitted that Mandal Commission Report and the Office Memorandum of August 13, 1990, and

September 25, 1991, were unconstitutional, illegal and void for the following reasons one prejudice to the other ³⁵.

- (a) **The identified of backward classes and reservation of jobs in services under the state have been made by a mere executive order.**
- (b) **The identification has been based on indicators which themselves constitute irrelevant criteria and weightage given are arbitrary and unreasonable and do not disclose any classification which bears a reasonable nexus to the object of the classification and thus violating Article 14 right to equality of the constitution.**
- (c) **Mandal Commission Report is based on conjectures and surmises because no report of the Technical Committee or of the Panel of Experts has been filed nor can the same be found from the perusal of the report.**

The petition further submitted that the identification of 3,743 castes apart from being constitutional as being based on castes, is further erroneous since the Anthropological Survey of India has given the figures of 1,130 as castes which could be traced. The result, therefore, follows that the other remaining castes are non-existent on the ground of not being traceable or on the ground of being Synonymous sub-group etc.

The Five Judge Bench of the Court stayed the operation of the O.M. till the final disposal of the case on October 1, 1990. Unfortunately the Janata Government again collapsed due to defection and in 1991 Parliamentary elections of the Congress Party again came to power at the centre ³⁶.

The Congress Party government headed by Shri P.V. Narsimha Rao issued another office Memoranda on September 25, 1991 but made two changes in the O.M. of Janata Dal Government issued on August 13, 1990, that:

- 1) **added the economic criterion in giving reservation to proper sections of Scheduled Castes and Scheduled Tribes in then 27% quota and**
- 2) **reserved another 10% of vacancies for other commercially Backward sections of higher castes.**

The five Judge Bench referred the matter to a special constitution Bench of nine judges in view of the important of the matter to finally settle the legal position relating to reservations as in several other judgements the Supreme Court have not spoken in the same voice on this issue. Despite several adjournments the Union Government failed to submit the economic criteria as mentioned in office memoranda of September 15, 1991.

The nine Judge constitution Bench of the Supreme Court by 6-3 majority (Justice B.P. Jeevan Reddy, CJ. M.H. Kania, M.N. Venkatachaliah, A.M. Ahmadi with S.R. Pandian and S.B. Sawant) concurring by separate judgements held that the decision of the Union Government to reserve 27% Government jobs for backward classes provided socially advanced persons – creamy, layer among – them are eliminated, it is only confined to initial appointments and not promotions and the total reservation shall not exceed 50%. The court accordingly partially held two impugned notifications (O.M.) dated August 13, 1990 and September 15, 1991 as valid and enforceable but subject to the conditions indicated in the decision that socially advanced persons – creamy layer – among. Backward classes are excluded. The court, however, struck down the Congress government O.M. reserving 10% Government jobs for economically backward classes among higher classes. The majority also held that the reservation should not exceed 50% while 50% shall be rule but it is necessary not to put out consideration certain

extraordinary situations inherit in the great diversity of this country and people.

In view of this the majority did not express any opinion on the correctness or adequacy of the Mandal Report. The dissenting Judgement was given by Justice T.K. Thommen, Kuldeep Singh and R.M. Sahai. The minority struck down the two O.M.'s issued by the Union Government as unconstitutional. It also held that Mandal Report is unconstitutional and recommended for the appointment of another commission for identifying the Socially and Educationally Backward classes of citizens ³⁷.

The Court examined the scope and extent of Article 16(4), in detail and clarified various aspects on which there were difference of opinion in various other judgements. The majority opinion of the Supreme Court on various aspects of reservation provided in Article 16(4) are as follows:

(a) BACKWARD CLASS OF CITIZENS IN ARTICLE 16(4) CAN BE IDENTIFIED ON THE BASIS OF CASTE AND NOT ONLY ON THE ECONOMIC BASIS:

The majority held that caste can be and quite often is a social class in India and if it is backward socially it would be a backward class for the purpose of Article 16(4). There are classes among non-Hindus, Muslims and Christians and Sikhs and if they are backward socially they are entitled for reservation under Article 16(4). Although Urbanisation has to some extent broken this caste occupation relationship but not wholly and is still predominant in rural areas ³⁸.

The majority held that neither the Constitution nor the law prescribes any procedure or method for the identification of the backward classes. Not it is advisable or possible for the court to lay

down any such procedure or method. The court said that it must be left to the authority appointed to identify. It is free to adopt any method it thinks convenient and so long as it covers the entire population identification of Backward classes can certainly be done with reference to castes among, and along with other occupation of groups. Caste will have to be considered among and along with other criteria as the test of backwardness. Caste alone cannot be taken into consideration for purposes of identification of backward classes. A similar process can be adopted for occupational groups, communities and classes.

(b) ARTICLE 16(4) IS NOT EXCEPTION TO ARTICLE 16(1). IT IS AN INSTANCE OF CLASSIFICATION RESERVATION CAN BE MADE UNDER ARTICLE 16(1):

The majority held that Article 16(4) is not an exception to Article 16(1) but an independent clause. Reservation can be made under Article 16(1) on the basis of reasonable classification³⁹. The court accordingly overruled its decision in **Balaji v. State of Mysore**⁴⁰, in which it was held that Article 16(4) is an exception to Art 16(1). The court approved the decision in **State of Kerala v. V.N.M. Thomas**⁴¹, where it was held that Article 16(4) is not an exception of Article 16(1) but a facet of Article 14 and permits reasonable classification just as an Article 14 does.

(c) BACKWARD CLASSES IN ARTICLE 16(4) ARE NOT SIMILAR TO AS SOCIALLY AND EDUCATIONALLY BACKWARD CLASSES IN ARTICLE 15(4):

The majority held that the Backward class of citizens contemplated in Article 16(4) is not the same as socially and

educationally backward classes referred to in Article 15(4). It is much wider clause (4) does not contain the qualifying words socially and educationally as does the clause (4) of Article 15. Backward class of citizens in Article 16(4) taken in SC's and ST's and all other backward classes of citizens including the socially and educationally backward classes. Thus certain classes may not qualify for Article 15(4), may qualify Article 16(4) is the socially and educationally backward classes in Scheduled Castes and Scheduled Tribes mentioned in Article 15(4) ⁴².

(d) CREAMY LAYER CAN BE AND MUST BE EXCLUDED FROM BACKWARD CLASSES:

The majority held that while identifying the backward classes the socially advanced person – the creamy layer among them should be excluded. The court directed the Government of India to set up a Commission within four months from the decision specifying the basis applying the relevant and requisite socio-economic criteria to exclude socially advanced persons that is the creamy layer among backward classes ⁴³.

The court held that the basis of exclusion of advanced sections creamy layer from other backward classes for the purpose of reservation should not merely be economic unless the economic advancement is so high that it necessarily means social advancement. While the income of the person can be taken as a measure of his social advancement, the limit prescribed should not be such as to the result in taking away with one hand what is given with the other. But the court said that there are certain positions of which ~~one can~~ be treated as advanced without further inquiry. For

example, if a member of designated class becomes a member of IAS or IPS or any other all India Service his status in society rises, he is no longer socially disadvantaged. His children get full opportunity to realize their potential, they are in no way handicapped in the race of life. His salary is also such that he is above want. It is not logical that his children should be given the benefit of reservation for giving them the benefit of other reservation disadvantaged members of the backward class may be deprived of that benefit ⁴⁴.

The majority said that while the rule of reservation cannot be called anti-meritian, there can be certain services and posts to which it may not be advisable to apply the rule of reservation. For example, technical posts in research and development organization; department institutions in specialities and super specialities in medicine, engineering and other such courses in physical sciences and mathematics, in defence services and in the establishment connected therewith. Similarly in posts of higher echelon eg., Professor (in Education) Pilots in Indian Airlines and Air India, Scientists and Technicians in nuclear and space application.

(e) ARTICLE 16(4) PERMITS CLASSIFICATIONS OR BACKWARD IN BACKWARD AND MORE BACKWARD CLASSES:

On this point the court over ruled the Balaji Case in which it was held that the sub-classification between Backward Classes and more Backward classes was unconstitutional. In the Mandal Case the court held that the classification is necessary to help the more backward classes, otherwise the advanced sections of Backward Classes might take all the benefits of reservations.

(f) A BACKWARD CLASS OF CITIZENS CANNOT BE IDENTIFIED ONLY AND EXCLUSIVELY WITH REFERENCE TO ECONOMIC CRITERIA:

It was held that it would defeat the very object of Article 16(4) to give adequate representation to backward classes in the services. Article 16(4) does not aim at economic upliftment or alleviation of poverty. It is specially designed to give a due share in the state power to those who have remained out of it mainly on account of their social and therefore, educational and economic backwardness ⁴⁶.

(g) RESERVATION SHALL NOT EXCEED 50%:

The majority held that the maximum limit of reservation cannot exceed 50%. However in an extraordinary situation it may be relaxed in favour of people living in far flung and remote areas of the country who because of their peculiar conditions and characteristics need a different treatment ⁴⁷. But in doing so the court said that extreme caution is to be exercised and a special case made out on this point. The majority affirmed that the **Balaji** and **Devadasan** Cases in which the 50% rule was laid down and overruled the **State of Kerala v. N.M. Thomas** and **K.C. Vansanth Kumar v. State of Karnataka** cases. The court relied on the speech of Dr. B.R. Ambedkar in the Constituent Assembly where he said that “reservation must be confined to a minority of seats”. Article 16(4) speaks of adequate representation and not proportionate representation. If the member of Scheduled Caste and Scheduled Tribe is selected in the open competition on the basis of merit they

will not be counted against the reserved quota. However the rule of 50% shall be applicable only to reservations proper they shall not be applicable to exemptions, concessions or relaxations if any provided to Backward classes of citizens under Article 16(4).

The Court also overruled the decision in **Devadasan v. Union of India** ⁴⁸ and held that 'carry forward rule' is valid provided it should not result in breach of 50% rule.

(h) RESERVATION CAN BE MADE BY AN 'EXECUTIVE ORDER':

The majority held that a provision under Article 16(4) can be made by an executive order. It cannot be made by Parliament or Legislature ⁴⁹.

(i) NO RESERVATION IN PROMOTION:

The majority held that there should be no reservations in case of promotions under Article 16(4). The reservation is only confined to initial appointments ⁵⁰. However it shall not effect promotions already made. Such reservations may continue for a period of 5 years, within this period, the authorities will revise, modify or re-use the rules relating to reservation. On this point many cases were overruled. They are **General Manger S. Rly. V. Rangachari** ⁵¹, **State of Punjab v. Hira Lal** ⁵², **Akhil Bhartiya Shashit Karamchari Sangh v. Union of India** ⁵³, and **Auditor General of India, Gyan Prakash v. K.S. Jaganatthan** ⁵⁴. This is consistent with the object enshrined in Article 335. At the initial stage reservation can be made for them but once they enter the service,

efficiency demands, these members too compete with others and earn promotions like all others the court said.

(j) PERMANENT STATUTORY BODY TO EXAMINE COMPLAINTS OF OVER-INCLUSION/UNDER INCLUSION:

The court directed the Union Government, State Governments and Union territories to appoint a permanent statutory body to examine complaints of wrong inclusion or non-inclusion of groups, classes and sections in the list of other backward classes. Its advice should ordinarily be binding upon the Government⁵⁵. It can also be consulted in the matter of periodic revision of lists of OBC's as suggested by the court in **Vasanth Kumar Case**⁵⁶.

(k) MANDAL COMMISSION REPORT – NO OPINION EXPRESSED:

The majority held that in view of the guidelines laid down in its decision there is no need to express any opinion on the correctness or adequacy of the exercise done by the Mandal Commission. Pandian J. held that the report is valid and can be implemented. The minority held that the report is invalid and recommended for appointment of a fresh commission for identifying backward classes.

(l) DISPUTES REGARDING NEW CRITERIA CAN BE RAISED ONLY IN THE SUPREME COURT:

The majority made it clear and directed that all objections to the criteria evolved by the Central and State Government to exclude socially advanced persons, creamy layer, from other backward classes shall be preferred only before the Supreme Court and not

before any High Court or tribunal. Similarly, any petition challenging the validity, operation or implementation of the two office memorandum shall be filed only before the Supreme Court and not before any Court⁵⁷.

(m) CRITICISM:

On examining the following main sources of the Mandal Commission Report-

- 1) Socio-educational field survey.**
- 2) The census report of 1961 (Particularly for the identification of primitive tribes, aboriginal tribes, forest tribes and indigenous tribes).**
- 3) Personal Knowledge gained through extensive touring of the country and receipt of voluminous public evidence as described in Chapter 10 of the Report.**
- 4) The list of OBC's notified by various State Governments and Commission specified 3,743 Hindus and non-Hindus Castes comprising 52% of the population of India as other backward classes for the purpose of job and educational reservations.**

The Commission has treated castes as classes on the belief that there is a close linkage between Caste ranking of a person and his social educational and economic status. The Commission criticized the decisions in Balaji and Chitralkha as outmoded conservative and praised Rajendran as it equated castes with classes

The Mandal Commission adopted the following methodology in identifying the Backward Classes. It has first estimated the total

percentage of Scheduled Castes and Scheduled Tribes; Later they took the figures of Muslims, Christians, Sikhs, Buddhists and Jains which were available from the census report. They have estimated the forward classes population at about 17.5%. By deducting from the total population of these categories the Mandal Commission arrived at the percentage of other backward classes which according to them was 43.7%. To this, they have added roughly half of the percentage of other religious groups, viz. Muslims, Christians, Sikhs, Buddhists, Jains considering them as backward and arrived at the percentage of Backward Classes in the total population of India which is placed at 52%. As disclosed by Mandal the systematic caste-wise enumeration of population introduced in 1881 was discontinued in 1931 and then grouped them into broad caste-clusters and religious groups. These collectives were subsequently aggregated under the following heads:

- 1) **Scheduled Castes and Scheduled Tribes.**
- 2) **Non-Hindus Communities, Religious groups etc.**
- 3) **Forward Hindu Castes and Communities,**
- 4) **Backward Hindu Castes and Communities.**

The population of Hindu OBC's could be derived by subtracting from the total population of Hindus, the population of Scheduled Castes, Scheduled Tribes and that of forward Hindu Castes and communities and it worked out to 52%. But the same approach could not be adopted in respect of non-Hindu OBC's. Assuming that roughly the proportion of OBC's, amongst non-Hindus was of the same order as amongst the Hindus population, of non-Hindus OBC's was also taken as 52% of the actual proportion of their population of 16.6% of 8.40%⁵⁹.

Thus the total population of Hindu and non-Hindu OBC's naturally added upto nearly 52% (43.70% plus 8.40% of the Country's population). It is thus seen that excluding Scheduled Castes and Scheduled Tribes, Other Backward Classes constitute nearly 52% of the Indian population.

Here it is emphasized that in the absence of Caste-wise census figures it is not possible to determine the precise population of backward classes. It also observed that so many castes included as backward classes by Mandal Commission are not really backward. It is also ironic that Yadavas (Ahirs), Kurmis and Koiris in Northern India which have progressed since independence were among the prominent beneficiaries of Mandal Commission Report.

Shri L.R. Nayak a member of Mandal Commission in his dissent note also expressed the same feelings. The Backward Castes identified by the Commission are divided by him two groups i.e., one of intermediate Backward Classes and another of Depressed backward classes. In his view the intermediate backward classes should not be permitted to usurp economic and political power in the name of backward classes at the cost of really depressed backward classes⁶⁰. The views of Kuldeep Singh were more sound and logical. He observed-

The identification of 3,743 castes by the Mandal Commission as the 'beneficiary class' for job reservation under Article 16(4) is wholly unconstitutional, invalid and cannot be acted upon, for the following reasons⁶¹.

- (i) **The reference made to the commission is based on the legal fallacy that 'backward class' means socially and educationally backward in Article 16(4).**

- (ii) **Article 16(4) contemplated backward sections of classes not adequately represented. The exercise has not been done.**
- (iii) **The Commission was required to examine the desirability or otherwise 'of reservation'. This has not been done.**
- (iv) **No survey was made to ascertain if the 3,743 castes had inadequate representation.**
- (v) **The so-called socio-educational field survey was an eye wash.**
- (vi) **The report virtually rewrites Article 16(4) by substituting caste for class. 'The indicators' were applied only to the caste. This violates Article 16(2) and 16(4).**
- (vii) **The report invents castes even for non-Hindus.**
- (viii) **It is wholly arbitrary to count the population of backward classes on 1931 census.**
- (ix) **According to the Report, itself, the material was inadequate. Hardly any state was able to give the desired information.**

Judges like Krishnaiyar, Chinnappa Reddy, and Desai also cautioned the misuse of the present reservation policy. Krishnaiyer in Thomas case observed that a word of sociological caution. In the light of experience here and else where, the danger of reservation is three fold. Its benefits, by and large are snatched away by the creamy layer of the backward castes or class thus keeping the weakest among the weak always weak and leaving the fortunate layers to consume the whole cake. Secondly this claim is over played extra vagantly in democracy by large and evocal groups whose burden of backwardness has been substantially lightened by the march of the time and measures of better education and more opportunities of employment but wish to wear the weaker section table as a means to score over their near equals formally categorised as the upper brackets. Lastly, a lasting solution to the problem comes only from improvement of social

environment added educational facilities and cross fertilisation of castes by inter castes and inter castes marriages sponsored as a massive state programmes, and this solution is calculated hidden from view by the higher backward groups with a vested interest in the plums of backwardism ⁶².

Nobody would dispute that Scheduled Castes, Scheduled Tribes and Other Backward Classes need special protection. But the practice of reservation on the basis of caste and communities has led to caste and communal rights in the rural and urban areas of India. In a country, like India where about 80% of the population is backward, the caste based reservation cannot be adopted. The economic criterion should be the exclusive criterion to help people irrespective of their caste and community. The judicial pronouncements have also their impact in the area of giving assistance on the ground of economic backwardness. The Supreme Court of India, in a number of cases, has rightly forbidden the criteria of religion, caste etc. as the basis of reservation ⁶³.

Reservation of any kind based on birth, castes or religion cuts at the roots of democracy and spirit of Indian Constitution. It creates vested interest in backwardness, casteism and communalism. It was Dr. B.R. Ambedkar, the best friend of the depressed, himself admitted, reservation is not even in the best interests of its immediate beneficiaries because it destroys their self confidence. He himself told that the Scheduled Caste people would not be able to stand on their legs so long as they are dependent on the crutches of reservation. That is why he advocated total abolition of caste based reservations ⁶⁴.

The second attack against this judgement is that it is perpetuating the evils of caste system and accentuating caste consciousness besides impeding the doctrine of secularism, the net effect of which would be dangerous and disastrous for the rapid development of the Indian Society as

a whole marching towards the goal of the welfare state. According to them, the identification of SEBC's by the Commission on the basis of Caste system is bizzare and barren of force, much less exposing hollowness. Therefore the OM's issued on the strength of the Mandal Report which is solely based on the caste criterion are violative of Article 16(2) ⁶⁵.

In the determination of a class to be grouped as backward, a test solely based upon caste or community cannot be put valid but, in my opinion, though directive principle contained in Article 46 cannot be enforced by courts. Articles 15(4) and 16(4) will have to be given effect to in order to assist the weaker sections of the citizens, as the state has been charged with such a duty, no doubt that any provision made under this clause must be within the well defined limits and should not be on the basis of caste alone. But it should not be missed that a caste is also a class of citizens and that a caste as such may be socially and educationally backward. If after collecting the data, it is found that the caste as a whole is socially and educationally backward, in my opinion the reservation made of such persons will have to be upheld notwithstanding the fact that a few individuals in that group may be both socially and educationally above the general average. In fact, there are numerous castes in the country which are socially and educationally backward and, therefore, a suitable provision will have to be made by the state as charged in Article 15(4) and 16(4) to safeguard their interest.

Now the other question which strikes in the mind is whether the socially and educationally backward classes (OBC's) different from SC's and ST's ? Misunderstanding of what of Founding Fathers meant by, "socially and educationally backward classes" has led to many misinterpretations. The term 'class' is generally attributed to economic conditions. Since here it is used for both socially and educationally

backward classes it does not give clue to think that it is about economic backwardness. The rational understanding of these terms would be that it is a class or a section of people who continues to suffer from social disabilities not only because, they belong to low caste but also because of their educational backwardness. Only these sections or classes have been named as the SC's and ST's ⁶⁶.

If the SC's and ST's are different from the socially and educationally backward classes, the constitution – makers would have written socially and educationally backward classes and the SC's and ST's. In fact these terms “Socially and educationally backward classes” explain the state of SC's and ST's.

While the Harijans at times suffer from social disabilities especially in the villages even after achieving higher education and better employment the middle caste people of whom came under the OBC's enjoy better social status even otherwise like the high castes. The OBC's on the other hand blames Brahmins for the existing caste system and on the other suppresses the SC's/ST's to prove their caste superiority. If reservation is meant for these who suffer from social disabilities, the claims of the OBC's becomes invalid. In fact it the middle caste people who perpetuate caste discrimination.

Of course, the Brahmins are responsible for the creation of varna system and majority of them strictly practice untouchability. But in general they do not indulge in violence to maintain their status quo. When the OBC's already enjoy superior, social status than the SC's/ST's why do they need reservation to improve their social status. ⁶⁷

The claim of the OBC's may be acceptable on the ground that they are economically poor and therefore, they need to be helped by the government. But the Government support to improve their economic status

need not be only through reservation. The reservation policy is not a poverty alleviation programme. If it is considered so, at least for the present discussion, it should also consider the high caste people and others belonging to different religions who too are economically poor.

Reservation on the economic basis is indeed a welcome demand. Unfortunately in India the individuals' social status largely depends on their caste hierarchy unlike in the U.S.S.R. and U.S.A. where the individuals' status is measured in terms of their merits. The haves and have-nots of high caste and low caste, Hindu and Muslims, Hindus and Sikhs and so on⁶⁸.

Poverty is the culprit-cause of all kinds of backwardness. A poor man with no money lacks ordinary means of subsistence. Indigence keeps him away from education. Poverty breeds backwardness all around the class into which it strikes. It invariably results in social, economic and educational backwardness. Poverty has a direct nexus to social backwardness. It is an essential and dominant characteristic of poverty. A rich person belonging to backward caste depending upon his deposition may be or may not be socially backward, but a poor Brahmin struggling for his livelihood invariably suffers from social backwardness. Presently the reality is that economic standards confer social status on individuals. A poor person, however honest, has no social status around him whereas a white collar criminal moves in a high society. No society can hide the facts that there are millions of people, who belonging to the so-called elite castes are as poor and often a great deal poorer than a very large number of proportion of the backward classes⁶⁹.

It is fallacy to think that a person, though earning thousands of a Rupees per day or holding higher posts is still backward simply because he happens to belong to a particular caste or community whereas millions of

people living below poverty line are forward because they were borne in some particular caste or communities. Poverty never discriminates, it chooses its victims from all religions, creeds and castes. The pavement dwellers and the slum dwellers, belonging to different castes and religions have a common thread of poverty around them. Are they not the backward classes envisaged under Article 16(4) ? Poverty binds them together as a class, classes of citizens living in chronic-cramping poverty are per se socially backward. Poverty ruins into generations. It may be a result of the social or economic inequality of the past.

During the British regime several communities who fought the Britishers and those who actively participated in the freedom struggle, were deliberately kept below the poverty line. There are vast areas in India, like Orrisa, which perennially poverty sticken. By and large poverty in this country is a historical factor looked from any angle it is not possible to hold that the citizens of India who are living under poverty conditions or below poverty line are not socially backward. It would seem to be doing violence to the very object and purpose envisaged under Article 16(4). To say that the poor of the country are not eligible for job-reservations under the said Article ⁷⁰.

Since the bulk of the population of this country is poor and there may be a large number of criminals, for the reserved jobs, there is no ground to deny the poor their right under Article 16(4). This reasoning would apply to the other backward classes with much more force. Mandal Commission has identified 52% of the population as backward. Apart from that 22% are Scheduled Castes and Scheduled Tribes. Persons conversing reservation for 74% of the whole population of the country are not worried about the fact that by doing so they are axing the interests of the remaining

36% of the population which may infact deserve the same protective umbrella of job reservations. The poor can be classified on the basis of income, occupation, conditions of living such as slum dwellers, pavement dwellers etc. and priorities may be worked out. They can be operationally defined, categorised and there after the backward sections can be identified for the purposes of Article 16(4). It is high time that that we leave the dogmatic approach of making reservations in public services on the basis of caste as a symbol of social backwardness. A practical measure should be adopted to confine it only to low income groups of people having unremunerative occupations whose talents and abilities are subdued under the weight of poverty. Therefore necessary suggestion is that a backward class for the purpose of Article 16(4) can be identified solely on the basis of economic criteria.

It is an established fact that social and educational backwardness stem from economic backwardness. In an age where everything – right from birth till death is governed by money power it is a fallacy to connect backwardness with such criteria as a caste or creed. If this appraoch is granted further lease it is bound to re-bounce and shelter the social fabric of the country. It is not a secret that a clamour for getting the reservation benefits has attained such wide dimensions that every case is demanding itself to be tagged with this card. It appears that dignity and courage is being pledged for the sake of getting something which is neither elevating to those who claim it, not gratifying for those in power.

Here it is submitted that the views of Kuldeep Singh, Thommen and Sahai, JJ are very though provoking. In order to give any fruitful meaning to the secular character of the constitution these views are very relevant. It is a well known, law is an adjudgement among conflicting interests, however the majority judges adopted a new approach in this direction to

this problem and for the first time made an attempt to exclude the creamy class of backward castes to identify the really backward classes. Here it is pertinent to note the changing attitude of the judiciary through the opinion of justice Jeevan Reddy himself, the present Judge of the Supreme Court, gave the leading judgement in Mandal Case, on Mandal Commission Report expressed in his own words in **Narayan Rao v State of Andhra Pradesh**⁷¹, Andhra Pradesh High Court Judge as he then was observed that here it is emphasized that in the absence of Caste-wise census figures, it is not possible to determine the precise population of backward classes. It is also observed that so many castes included as backward classes by Mandal Commission are not really backward.

Right from the very beginning the reservation policy has always been subjected to great controversy. The others who are not given reservations have the opinion that they are in no better way economically, socially and educationally than those preferred. The Supreme Court in its ambiguous interpretative process has further confused the concept of caste based backwardness and the backward classes. The Supreme Court never remain constant on the question of identification of socially and educationally backward classes. Sometime it takes the caste as sole criterion and sometime caste cum means test. There is no unanimous opinion among the judges of the Supreme Court as the role of caste in classifying the Backward Classes.

The bird eye view of the Mandal Case gives us the idea that atleast an acceptable solution to all groups is made in the decision to resolve the social tensions and to uplift the really backward classes. For the Supreme Court articulated the Constitutional provision in accordance with the changing circumstances of the society. The judiciary acceptance of the exclusion of the creamy layer who were presumed as snatchers the benefits

of the reservation policy at the cost of the really needy is a welcome step. Placing an income limit at a reasonable level i.e., community cum means test and excluding persons/families above that income limit through the judgement is highly desirable step. It serves to reduce the division of society on the caste lines.

Another welcome feature of the decision of the Supreme Court is to limit the total reservation for Scheduled Castes, Scheduled Tribes and OBC's to 50% of the total vacancies. It should be remembered that reservation in government posts was never regarded as a permanent feature of our constitutional set up, and in that context the cancellation of the reservation in promotional post appear to be a good beginning for the eventual end of the reservation policy. Reservation should disappear gradually with the social and educational progress of the presently backward communities.

Dr. Thommen said that whenever and where ever poverty and backwardness are identified it is the Constitutional responsibility of the state to initiate economic and other measures to ameliorate the conditions of the people residing in those regions. He said that poverty which is the ultimate result of inequities and which is the immediate cause and effect of backwardness has to be eradicated not merely by reservation, but by free medical aid, free elementary education, Scholarships for higher education and other financial support, free housing, self employment and settlement schemes, effective implementation of Land reforms and strict and impartial operation of the law enforcing machinery.

Nani A. Palkiwalla is of the view that the judgement of the Supreme Court in the Mandal Report will revive casteism which the constitution intended to intend. According to him, future historians of the Indian republic will regard 1992 as one of the saddest year in the history of our

jurisprudence. This is the year in which the Supreme Court, by a majority ensured a fresh lease of the life to the cankar of casteism for a long and indefinite future. Over the last thousand years, the greatest curse which had effected the Indian nation has been the curse of casteism, as Justice Kuldeep Singh has pointed out in his minority judgement. Historians too agreed that why the foreign invaders like Afghans, the Turks, the Mughals succeeded in subjugating this country was because of casteism divided Indian Society and assigned military duties to the one caste only ⁷².

He stated that the majority judgement will revive casteism which the Constitution emphatically intended to end, and the pre-independence tragedy would be re-enacted. Caste will be given precedence over merit and calibre. Article 16(4) has been virtually rewritten by substituting caste by class. The crucial point that under the majority judgement of the Supreme Court it the members belonging to certain castes only, who are eligible to be considered for reservations. When the creamy layer is removed what is left with us are still the members of certain castes only. The sections of society which fall outside those designated castes do not qualify for reservations, however, socially and educationally backward they may be.

It is undisputed that after 50 years of Independence, the social, educational and economic landscape have changed beyond recognition. There are crores of backward individuals in forward castes and crores of forward individuals in backward castes. By making caste, the essential condition. The majority judgements have.

- (a) included for reservation all members of backward castes who do not belong to the creamy layer.**

(b) Excluded all members of forward castes, however backward and deserving.

Such a classification patently discriminates against those who do not belong to these castes which are listed as backward.

A backward class may be given the benefit of Article 15(4) or Article 16(4), but the class must consist of a homogenous group – the element of homogeneity should be backwardness characterizing the class. In other words, the link or thread holding the class together should be backwardness of the members. Such a link or thread can never be supplied by caste. Excluding the creamy layer of the caste would not get rid of the vice that the only link, or thread binding the benefited class together is caste. In other words a classification may be justified on the ground that it is ‘backward class’ but never on the ground that it is ‘backward caste’. This principle was precisely enunciated by the Constitution Bench in **Triloki Nath** ⁷³, **Pradeep Tondon** ⁷⁴, **Jaishree** ⁷⁵, **Akhil Bhartiya Soshit** ⁷⁶ Cases. These judgements were cited before the Supreme Court and referred to in majority judgement without disapproval, but they are inexplicable overlooked.

The majority judgements did not pause to consider the reasons why for all the past decades the Union Government had not made reservations on caste basis in areas of employment admissions and promotions. The practice of mentioning the caste in service records was discontinued by the Government of India by 1951. The last census records to proceed on caste basis are those of 1931, which though hopelessly obsolete, were relied upon by the Mandal Commission because they were the latest census records to proceed on the caste basis.

Kaka Kalelkar’s in his own letter forwarding his Report (1955) to the President said, “I am definitely against reservations in government

services for any community, for the simple reason that services are not meant for the servants but they are meant for the service of the society a whole.” Kalelkar’s Report, which was not accepted by the government, has listed 2,399 castes as Backward. Dealing with this the Union Government said, “If the entire community, barring a few exceptions, has this be regarded a backward, the really needy would be swamped by the multitude and hardly receive any special attention or adequate assistance”. This objection would apply a fortiori to the Mandal Report which lists 3,743 backward castes. Like the expanding Universe the list of backward castes is ever expanding. Many more are already waiting in wings to receive attention.

(ii) POSITION AFTER MANDAL CASE:

At it is understood that on one hand that Mandal Case decision has laid down a workable and reasonable solution to the problem of reservation. But on the other hand and the politicians are trying to dilute the effect of the Mandal Case decision in order to make their vote bank intact. The court has laid down that there shall be no reservation in promotions in government jobs. But the government has enacted the constitution 77th Amendment Act, 1995 in order to bypass the courts ruling on this point. This amendment has added a new clause (4-A) to Article 16 of the constitution which provides that “Nothing in this article shall prevent the state from making any provision for reservation in matters of promotion to any class or classes of posts in the services of the state in favour of the Scheduled Castes and Scheduled Tribes which in the opinion of the state, are not adequately represented in the services under the state.” This is thus clearly intended to nullify the effect of the decision of the Supreme Court in Mandal Case. The evil of reservation in promotions was abolished by the

Supreme Court as it caused a lot of bitterness and disappointment among employees of the same category who were bypassed by their colleagues having less merit. The haste in which the government had brought this very amendment clearly shows that it was passed for political considerations. It has its own dangers. Although it covers only the SC's and ST's, but in due course a demand for such reservation can be made for other OBC's also.

In **Union of India v. Virpal Singh** ⁷⁷, the Supreme Court has tried to mitigate to some extent the inequity that reservation in general has to represent by holding that caste criterion for promotion is violative of Article 16(4) of the constitution. The case was concerned with the legality of the extent of reservation to promotions in Railway Services which enabled specified groups (SC's and ST's) not only to get jobs on their caste labels but also get promotions on the same basis. The Supreme Court has rightly held that seniority between reserved category candidates and general candidates should continue to be governed by their panel position prepared at the time of selection. Under Article 16(4) there is no uniform or prescribed method of providing reservation. The extent and nature of reservation is a matter for the state to decide having regard to the facts and requirement of each case. It is therefore open to the state to provide that the candidate promoted earlier by the virtue of rule of reservation roster system shall not be entitled to seniority over his senior in the feeder category and that as and when a general candidate who was senior to him is promoted he will regain his seniority over the reserved candidate notwithstanding that he is promoted subsequent to the reserved candidate.

The ruling of the Court puts a question mark on the validity of the recent constitution amendment permitting reservations in promotions to SC's and ST's.

In a significant ⁷⁸, judgement court has held that any post in cadre falling vacant, after reserved posts were filled, is to be filled from the same category of persons whose retirement or resignation caused the vacancies. The five judge bench of the court, however made it clear that the ruling of court on the working of the roster shall operative prospectively.

In S.B.I. SC/ST Employers welfare Association v. State Bank of India⁷⁹ the State Bank of India SC/ST Employers welfare Association Chandigarh has challenged the reservation policy framed by the SBI reserving certain posts for employees belonging to SC/ST's in promotion. The court held that the policy of reservation in promotion was not violative of Article 16(4) and (4-A) and the vacancies lapsed due to non-availability of reserved category candidate with required length of service could not be revived and filled retrospectively. Article 16(4) is an enabling provision and confers discretionary power on the state to make reservation at the stage of initial recruitment or at the stage of promotion in favour of a Backward Class of citizens which in the opinion of the state is not adequately represented in the Services of the state. Article 16(4) does not impose a duty on the government to make such reservation. Hence no person can claim it as a matter of right.

In a recent judgement in **Ashoka Kumar Thakur v. State of Bihar**⁸⁰ the Supreme Court has quashed the economic criteria laid down by the Bihar and Uttar Pradesh government for identifying the affluent sections of the backward classes (creamy layer), and exclude them for the purpose of job reservation and held that the criteria for identification of "creamy layer" is violative of Article 16(4) and Article 14 and against the law and laid down by this court in Mandal Case. The Court held that the Supreme Court in Mandal Case has categorically held that a person belonging to a

backward class who becomes a member of the IAS, IPS or any other All India Service could not seek benefits of reservation for his children.

The court held that the additional condition laid down by the states of Bihar and Uttar Pradesh have no nexus with the object sought to be achieved. The states of Bihar and U.P. have acted wholly arbitrarily and in utter violation of the law laid down by this court in Mandal Case. By striking down the criteria laid down by the states of Bihar and Uttar Pradesh for identifying “creamy layer” the Supreme Court has removed a glaring anomaly in the job reservation policy adopted by the two Governments for the benefit of the Backward Classes. The very purpose of the quota system was to help the poor. This purpose would be defeated if no distinction is made between rich and poor among the backward classes. This was the reason why the Court has to struck down the creamy layer test of the Bihar and U.P. Governments. If the rich and the poor are treated alike in the matter of job reservations, they are bound to benefit at the cost of the poor. The Supreme Court by striking down the creamy layer test by the two Governments have contributed considerably for social justice. In the Mandal Case the apex court had made it clear that a person belonging to a backward class who become a member of IAS, IPS or any other All India Service could not seek the benefit of reservation for their children. Since neither the Constitution nor the Court prescribed any procedure for identifying the creamy segment among the backward classes the court left it to the centre and the State Governments to evolve the requisite criteria by setting up a permanent commissions. In pursuance of the court’s order the centre has formulated such a criteria. But the states of Bihar and U.P. added unacceptable criteria with it as to what constitutes the ‘creamy layer’. Therefore, the court was left with no options again to nullify the criteria

adopted by the State Governments against the guidelines laid down by it in the Mandal Case.

The Supreme Court judgement has come at a time when the whole concept of reservation is being slowly, reduced to a mockery. The state of Tamil Nadu has passed a law reserving more than 50% of seats (69%) for these categories, and the legislation has been included in the Ninth Schedule to save it from judicial review.

In **Chattra Singh v. State of Rajasthan** ⁸¹, the appellants candidate belonging to OBC challenged the validity of the Rajasthan State Subordinate Rule 13 on the ground that it was violative of Article 15(4) and 16(4) and hence it was unconstitutional Rule 13 provides for lowering of lowest range marks fixed for general candidates for being called to appear at final recruitment only in favour of SC and ST candidates. It was contended by the OBC candidate that Article 16(4) does not specify whether they should belong to SC, ST or OBC. All are compendiously called Backward Classes and therefore they are entitled for the benefit of reservation and therefore their elimination under provision to the Rule is arbitrary and illegal. The Supreme Court rejected their contention and held that the candidates belonging to OBC are not entitled to the 5% exemption in qualifying marks available to SC and ST candidates under Rule 13, because they are separate category from SC & ST. The OBC and SC and ST are distinct categories. The SC and ST have been dealt separately by the Constitution. The OBC's are not identified by the Constitution to get the benefit under Article 16(4) and 15(4). Though OBC's are socially and educationally not forward, yet they do not suffer the some social handicaps inflicted upon. The object of reservation for the SC and ST's is to bring them into the mainstream of national life, while the objective in respect of the backward classes is to remove their social and educational handicaps.

So the 5% further out of marks in the Preliminary Examination from the lowest ranges fixed for general candidates. Thus, the dissimilar treatment given to the OBC's candidates are not violative of Article 14 or Article 16.

In *State of Punjab v. G.S. Gill*⁸² the Supreme Court has held that reservation in promotion to a single post is not violative of Article 16(1) of the Constitution. If the government have applied the rule of rotation and the roster point to the vacancies that had arisen in single post it can be filled by a candidate belonging to the reserved category at the point on which they were eligible to be considered for promotion and such a rule is not violative of Article 16(1) of the Constitution. In this case, the respondent who was a general candidate, was appointed as Junior Technical Assistant in Industries Department of State of Punjab. The post of Assistant Superintendent Quality Marketing Centre (Textile) in the next promotion cadre, is the single post in that cadre. The said post was reserved for Scheduled Caste candidate as per the roster. The second respondent who was a qualified candidate was promoted to the said post. The respondent challenged the said appointment and it was held that reservation of a single promotion post is not unconstitutional. In view of the recent five Judge Bench decision reservation cannot be made in Single Cadre.

In *Jagdish Lal v. State of Haryana*⁸³, the Supreme Court held that the seniority gained by a SC and ST candidate because of his accelerated promotion as per rule of reservation cannot be wiped out on promotion of general candidate on a later date. The reserved candidate will become senior to the general candidate in each successive promotion. The court held that "on promotion to the higher cadre the reserved candidate steal a march over general candidates and become member of the service in the higher cadre or grade earlier to the general candidates. Under Rule 11, the inter-se seniority of the members shall be determined by length of

continuous service in a post in the service. Therefore, their seniority cannot be reopened, after the general candidates get promotion to the higher cadre or grade, though he was erstwhile senior in feeder cadre/grade”.

The Court held that “as soon as person was appointed to a cadre/grade, he started discharging the duties from the date of appointment to the post and his seniority was determined in the basis of that date unless he was appointed only as a stop gap arrangement or on an ad-hoc basis. This principle is applicable to the general as well as reserved candidates on this principle there is no dichotomy and this is the settled serviced jurisprudence. In case of appointments of Dalits and Tribes on different yard-stick should be applied. The reserved candidate thus became senior to the general candidates, in each successive cadre/grade. The general candidates remain junior in higher echelons to the reserved candidates. The court held that the ruling of the High Court of Punjab and Hariyana does not suffer from any illegality. The court held that the judgement of the court in **Vir Pal Singh Chauhan Case** ⁸⁴ does not apply in this case as the rule in this case provides for such a promotion in government jobs.

In **State Bank of India, SC and ST Employees welfare Association v. State Bank of India** ⁸⁵, the Employees welfare association challenged the validity of promotion rule for SC's and ST's made by the State Bank of India. Under that Rule 15% seats were reserved for SC's and 7.5% for ST's. The rule provided that the unfilled vacancies will be carried forward for maximum period of 3 years but the maximum limit of reservation will not exceed beyond 50%. Besides they were given another exemption that they shall avail reservation benefit only for five years service. It was held that the above policy of reservation is not violative of Article 16(4) and (4-A) of the Constitution and the vacancies lapsed due to the absence of the reserved category candidates cannot be

revived retrospectively. Article 16(4) is an enabling provision and does not impose a duty to make reservation and therefore reservation cannot be claimed as a matter of right.

In a landmark judgement in **P.G. Institute of Medical & Research v. Faculty Association** ⁸⁶, a five Judge Bench of the Supreme Court has held that the total exclusion of the general public and cent percent reservation for the backward classes, as a single cadre post is not permissible under Article 16(1) and 16(4-A) of the constitution. “In making reservation for backward classes the state cannot ignore the fundamental right of the rest of the citizen.

The case came up before the court as a review petition filed by the Post Graduate Institution of Medical Education and Research, Chandigarh seeking a direction to validate the constitutionality of reservation in a Single Post Cadre, in view of the conflicting decisions of the court. The court held that Articles 14, 15, and 16 including 16(4) and 16(4-A) should be applied in such a manner so that a balance is struck in the matter of appointments by creating reasonable opportunities for reserved classes and also for other members of the community who did not belong to the reserved category. Such a view has been indicated in the decision of the court in **Balaji, and Sabharwal's Cases**. Even in Mandal Case the same view has been held by indicating that only a limited reservation not exceeding 50% is permissible.” The Court added that Article 15(4) is also an enabling provision like Article 16(4) and that the reservation under both Articles, should not exceed 50% limit.

The court held that the doctrine of equality of opportunity in 16(1) has to be reconciled in favour of the backward classes under 16(4) in such a manner that the latter while serving the cause of the backward classes shall not unreasonably encroach upon the field of equality. The court also held

that there was no difficulty in appreciating a need for reservation for the members of the backward castes and Scheduled Tribes and other Backward Classes and such reservation is not confined to the initial appointment in a cadre but also to appointments in promotional posts. But it cannot, however, be lost sight of, that in the anxiety for such reservation for the backward classes, a situation should not be brought about by which the chance of appointments is completely taken away so far as the members of the other segments of the society are concerned by making single percent reservation for the reserved categories to the exclusion of the other members of the other members of the community over when such a member is senior in service and is otherwise more meritorious. Their Lordships held "Hence until there is plurality of posts in a cadre, the question of reservation will not arise because any attempt of reservation by whatever means and even with the device of rotation of the roster in a single post cadre, is bound to create 100% reservation of such a post whenever such reservation is implemented.

Recently in the case of **Malkhan Singh v. Union of India**⁸⁷, a frequent problem arising in the case of reservation relating to carry forward of unfilled vacancies in reserved posts. In this the petitioner was as Scheduled Caste lawyer who had applied for the post of District Judge in Delhi. One post was reserved for SC and another for ST. For the SC vacancy, three were selected. No ST candidate was available. Out of the three selected for SC vacancies, the first in order of merit was appointed. During the subsequent years also, the ST vacancy could not be filled and therefore it was being carry forward. In the ruling of this case the Supreme Court agreed with the petitioner but of the time the judgement was delivered, he had ~~superannuated~~. The Court examined the provisions of the brochure on reservation for SC/ST issued by the government especially

referring to exchange of reservation between SC/ST. Chapters 8 and 11 para 11.2 says that “while vacancies reserved for SC and ST may continue to be treated as reserved for the respective community only, ST candidate may also be considered for appointment against a vacancy reserved for SC candidate and vice versa where such vacancy could not be filled by SC or ST candidate even in the third year to which reservation is carried forward”, This was the case of the petitioner. This view was re-affirmed by the Supreme Court in **K.N. Sreenivasan v. Flag Officer** ⁸⁸.

(iii) EXPERT BODY REPORT ON CREAMY LAYER:

In accordance with the direction given by the Supreme Court, the Union Government had appointed an expert committee known as Justice Ram Nandan Committee ⁸⁹ to identify the creamy layer among the socially and educationally backward classes (SEBC). The expert committee submitted its report on March 16, 1993 which was accepted by the Government of India. This report identifies the ‘creamy layer’ among the SEBC for excluding it from the list of Mandal beneficiaries. The committee report states that only when the creamy layer is substantially and stably formed after crossing the rubicon limit of social backwardness, then and then alone can it be made the basis for dis-entitlement.

1. **It says that the following Constitutional posts qualify for the rule of exclusion. The posts are President, Vice-President, Judges of the Supreme Court and High Court, Chairman and members of UPSC and State PSC, Chief Election Commissioners, Comptroller and Auditor General of India, Governors, Ministers and Membership of Legislatures.**
2. **The rule of exclusion covers class I officers of Central and State Services (direct recruits) Public Sector undertakings, armed**

- forces and para military forces, professional class including trades, business and industry and property owners.
3. It excludes those having gross annual income of Rupees one Lakh and above.
 4. In the Service Category the rule of exclusion will apply if either the husband or wife is a class I Officer. Where both are class I Officer and one dies the rule of exclusion applies. If both dies, then the rule does not apply. Permanent Incapacitation is treated as death and rule of exclusion does not apply.
 5. The Committee says that if before the death of either of or both spouses occurs, either of the spouses has the benefit of employment in any international bodies like the United Nations, IMF, World Bank for a period of five years, then the exclusion rule will continue to apply to their children.
 6. If a lady belonging to SEBC marries to a class I Officer then she would be entitled to get the benefit of reservation.
- (iv) **GROUPS-B CLASS-II (DIRECT RECRUITMENT):**
- 1) The report says that if both spouses are class II Officers then the rule of exclusion would apply to their offspring. If only one the spouses is a class II Officer it would not apply but if male officer from class II category gets into class I category at the age of 40 or earlier then the rule of exclusion would apply to their offspring.
 - 2) Where both are class II Officers and one of them dies then the rule of exclusion would apply to their children.
 - 3) Where the husband is class I Officer and wife is class II Officer and the husband dies, the rule of exclusion will not apply. Also

when the wife is a class I and husband is the class II and the wife dies, the rule of exclusion would not apply but if the husband dies the rule of exclusion would apply on principle that one of the parents namely, the matter continues to be a class I Officer.

- 4) The above service category criteria also applies to Officer holding equivalent or comparable posts in public sector undertakings, banks insurance organisations, universities and also equivalent or comparable posts and positions under private investment.
- 5) As regard armed forces including para military forces (not persons holding civil posts) the exclusion rule would apply at the level of Colonel and above in the Army and to equivalent post in the Navy and Air Force and para Military forces.

If the wife of an armed forces Officer is herself in the armed forces the rule of exclusion would apply, only when she herself had reached the rank of colonel, the service ranks below Colonel of husband and wife shall not be clubbed together.

Even if the wife is an Officer in the armed forces is in civil employment this will not be a ground for applying the rule of exclusion unless she falls in the service category.

- 6) Professional class and those engaged in trade, business and industry the exclusion will be determined on the basis of income⁹⁰ and wealth criteria.
- 7) For property owners the committee says if a person belongs to a family (father, mother and minor children) which owns irrigated land and the extent of irrigated land is equal to or more than 65% of the statutory ceiling area the rule of exclusion would

apply. The rule will not apply to persons belonging to families owning only unirrigated land irrespective of the area of such land.

In case of members of a family owning both irrigated and unirrigated lands, the exclusion rule would apply when the preconditions exists that the irrigated area is 40% or more of statutory ceiling limit for irrigated land.

- 8) **RESIDUARY CATEGORY** - The committee says that persons having gross annual income of one lakh Rupees or above or possessing wealth above the exemption limit as prescribed in the Wealth Tax would be excluded from the benefits of reservation.

(v) NATIONAL COMMISSION FOR BACKWARD CLASS:

On march 26, 1993, the Parliament had passed the bill setting up a National Commission for Backward classes for considering inclusions in and exclusion from the lists of castes notified as backward for job reservation purpose. The commission is a statutory body and therefore would enable it to comply with the directions given by the Supreme Court in Mandal Case.

(vi) BILL ON SC/ST VACANCIES PASSED:

“The Lok Sabha passed by two-thirds majority a constitution Amendment Bill seeking to end the 50 percent ceiling on reservation in backlog. Vacancies provided under an official memorandum of 1997. The Constitution (Ninetieth Amendment) Bill, 2000 was passed by two third majority. Replying to the Marathan debate on the issue of reservation policy for Scheduled Castes, Scheduled Tribes and other backward classes, Law Minister

Ram Jethmalani assured the House that the government efforts will be made to ensure the validity of over 50 percent reservation, now under challenge in the Supreme Court, is sustained. According to the Statement of objects and reasons, the government decided to amend the Constitution so that unfilled vacancies of a year, reserved to be filled in that year, would be considered as a separate class to be filled in any succeeding year or years. Such class of vacancies would not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of 50 percent reservation on the total number of vacancies of that year. The official memorandum of August 29, 1997, following a Supreme Court Judgement in the Mandal Case was issued to provide that 50 percent limit shall apply to current as well as 'backlog vacancies' and for discontinuation of the special recruitment drive. Due to adverse effects of the 1997 order, various organisations including MPs, had represented the centre for protecting the interest of SC's and ST's. This was opposed by Muslim League member G.M. Banatwala that the Bill was 'great nation betrayal. Responding this Ram Jethmalani said that the word 'backlog' was not added to the Bill and was part of the statement of objects and reasons appended to it as otherwise the statute could become ambiguous because the law has to apply to SC's, SST's as well as to OBC ⁹¹.

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CHAPTER V (D)

ABOLITION OF UNTOUCHABILITY

As already stated in chapter IV (A) that untouchability is the worst kind of atrocity on the Harijans. The makers of the Indian Constitution was aware of the chronic disease of untouchability, and they banned it by embodying Article 17 in the Constitution. Five years after the commencement of the constitution, the untouchability (Offences) Act, 1955, was passed and set into operation. The enforcement of the Act, however, was not satisfactory. A committee on Untouchability and Economic and Educational Development of Scheduled Castes was appointed in April 1965 to investigate the position and give recommendations. Its recommendations came in 1969 and views of the State-Governments were invited. Then, a Bill 'Untouchability (Offences) Amendment and Miscellaneous Provisions' was introduced in the Lok Sabha in 1972. After receiving served amendments by the Joint Committee, it was passed renaming it as Protection of Civil Rights Act in 1976. The Act has a little impact on the abuses of untouchability, particularly in rural areas.

The rural people practice untouchability in connection with temple entry, fetching water from public wells, hotels and other shops providing services of daily life. The observance of untouchability is based on the idea of purity or impurity specially connected with occupations - clean and unclean. The existence of such discrimination could date back to ancient time in Chhandogyopanished, though there are some contrary references about Chandal, he was degraded and ranked with that of dog and pig ¹. This refers to either unclean living of Chandal or to unclean nature of their occupation or both. But the progeny of the most hated of the reverse order

of mixed unions that of a Brahmin female and Shudra male ². I.P. Desai says that untouchability is a kind of behaviour, based on the concept of pollution and that it has religious and secular sanctions ³. He further adds that religious conversions could not improve their social status.

The Constitution of India makes a provision for the abolition of untouchability – a social evil practiced in this country from time immemorial Article 17 provides ⁴. That

“Untouchability” is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of ‘Untouchability’ shall be an offence punishable in accordance with law”.

A perusal of this article shows that it prohibits ‘untouchability’ and practice of it in any form is made an offence punishable under the law. This is the unique feature of the Indian Constitution since in no other country of the world social evil has been abolished through a Constitutional provision. According to Sir Ivor Jennings, it is a bad taste on the part of the framers of the Indian Constitution and Social Evils in a country should be mitigated through social reforms and should have no place in a Constitution which is a fundamental law of land. It is true that this article does not create any special privilege for anyone. Yet, it is a great fundamental right, a charter of deliverance to one-sixth of the Indian population from perpetual subjugation and despair, from perpetual humiliation and disgrace ⁵. Right, in fact, is a remedy against a disability. The abolition of untouchability is thus a fundamental right in true of the term.

‘Untouchability’ – the very word is obnoxious – has been a custom left over on the four caste groups of the post-vedic age. Those at the top of the caste hierarchy, denied every human right to the so called ‘untouchables’ – except to live and serve the rest of the community on

terms commanded by the former ⁶. This custom of untouchability had not only thrown millions of Indian people into darkness but it had also eaten into the very foundation of the nation. The framers of the constitution, therefore, thought it proper to eradicate the evil by incorporating a separate article into the chapter on Fundamental Rights in the Constitution ⁷.

This article is a very important provision of our Constitution and its object is to uproot some scandalously unreasonable social customs and disabilities from our nation. This provision stipulates to secure to all the citizens 'social justice' and equality of status' as outlined in the Preamble of the Constitution Article 17 if properly implemented, will definitely help to achieve these objects. Owing to some difficulties in the way of any definition or clear description that can comprehend all possible cases of 'untouchability', the word 'untouchability' has not been defined in the Constitution. Since, the term 'untouchability' has not been defined either in Article 17 or in the untouchability (offences) Act, 1955, judicial decisions have classified the meaning of the word '**Untouchability**'.

In *Devarajiah V. Padmanna* The Mysore High Court held that 'untouchability' is not to be understood in its literal and grammatical sense but to be understood as the practice as it is developed historically' in this country. Understood in this sense, it is the product of the Hindu Caste system according to which peculiar sections amongst the Hindus had been looked down as untouchables by the other sections of that society. A literal construction of the term would include persons who are treated as untouchables either temporarily or otherwise for various reasons, such as suffering from infectious disease or on account of social boycott resulting from caste or other dispute. In either case such person can claim the protection or benefit of Article 17 or of the 1955 Act ⁸. According to Dr. Ambedkar instead of leaving it to our Parliament or to a State Legislature

to make the enforcement of any disability arising out of untouchability a crime, itself declares any such enforcement an offence punishable by law”

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Article 17 contains two main provisions regarding untouchability. Firstly, it says that ‘Untouchability’ is abolished and its practice in any form is forbidden, and secondly, it declares that the enforcement of any disability arising out of ‘untouchability’ shall be an offence punishable in accordance with law. It may be mentioned here that the word ‘untouchability’ is enclosed in inverted commas which indicates that the theme of the article is not untouchability only in its literal sense but also the practice as it has developed historically in this nation. The term consists persons who are treated as untouchables either temporarily or otherwise for various reasons such as social observance, associated with birth or death owing to social boycott resulting from caste etc. In **Banglore W.C. & Silk Mills V. Mysore State** it was held that imposition of untouchability in such circumstances has no relation to the causes which regulate certain classes of people beyond the pale of caste estimate ¹⁰.

Mahatma Gandhi was the Chief exponent of abolition of untouchability and stood for the total eradication of this evil. He was a great champion of the cause of Harijans and once remarked

“I do not want to be reborn, but if I am reborn, I wish that would be reborn as a Harijan, as an untouchable, so that I may lead a continuous struggle against the opposition and indignities that have been heaped upon these classes of people.....” ¹¹. *“ It was an irony of fate that a man (Dr. B.R.Ambedkar) who has driven from one school to another, who was forced to take his lesson outside the class-room and who was thrown out of hotel in the dead of*

night, all because he was an untouchable, was entrusted with the task of framing the Constitution which embodies this article and which dealt the death-blow to this pernicious social custom”

The vigorous movement, with the fast of Mahatma Gandhi in 1932 against the ‘Communal Award’ was launched against untouchability through out the country. This movement had some positive result and untouchability was considerably eradicated in Urban areas particularly. But the evil continues to exist in rural areas particularly. But the evil continues to exist in rural areas and even after 30 years of independence atrocities have become a regular feature in village life. The Home Minister of India, while speaking on untouchability offences Bill which was passed into an Act in 1955, very rightly observed :

“This cancer of untouchability has entered into the very vitals of our society. It is not only a blot on the Hindu religion, but it has created intolerance, sectionalism and fissiparous tendencies. Many of the evils that we find in our society today are traceable to this heinous monstrosity. It was really strange that Hindus with their sublime philosophy and their merciful kind-heartedness even towards insects should have been party to such an intolerable dwarfing of manhood. Yet untouchability has been there for centuries and we have how to atone for it... ..

The idea of untouchability is entirely repugnant to the structure, spirit and provisions of the Constitution”¹².

The Untouchability Offences Act which may be said as a supplement of Article 15 of the Constitution, came into force in June,

1955. The Act was meant for prescribing “punishment for the practice of ‘untouchability’”, for the enforcement of any disability arising therefrom and for matters connected therewith. The Act provides punishment for enforcing certain religious social other disabilities on the ground of untouchability. It further provides that whosoever even abets any offence under this act is ‘punishable with the punishment provided for the offence’. Some other legislative measures such as the **Madras Removal of Civil Disabilities Act XXI of 1938**, the **Madras Temple. Entry Act 22 of 1939** and **Act V of 1947**, the **Bihar Harijan Removal of Civil Disabilities Act of 1949 etc.**, have also attempted to eradicate the social disabilities arising out of Untouchability. Before the passing of Untouchability Offences Act there were more than twenty such legislative enactments framed by different state legislatures to deal with the problems arising out of Untouchability. **The Bengal Hindu Social Disabilities Removal Act, 1948** was one of them which was challenged in a famous case **Banmali Das V. Pakhu Bhandari** on grounds of constitutionality ¹³. The facts of the case in brief are as follows:

Banmali Das, who was a Harijan (Cobbler by Caste) filed a complaint against Pakhu Bhandari and others alleging that the accused had refused to cut his hair and also to render similar services to other members belonging to Harijan Community. On behalf of defendant it was argued that the **Bengal Hindu Social Disabilities Removal Act, 1948** was violation of constitutional provision since it imposed unreasonable restriction on barbers while exercising their profession. It was also alleged that the validity of the Act was discriminatory in its tendency. In an unanimous decision, the Calcutta High Court rejected this contention. It was held that there was nothing in the Act which cut down the right to carry on the profession of a barber. “All it does it to prohibit him from discriminating

between one Hindu and another in carrying out his duties as a barber..... It does not deny any person equality before law. It tends to make all persons equality in society and before the law and it cannot possibly be argued that this Act denies any person equal protection of laws.”

Likewise, the U.P., **Removal of Social Disabilities Act, 1947** was challenged in Allahabad High Court in **State v. Bandari Case** ¹⁴. This court also unanimously upheld the Act and observed that the petitioners had no right to refuse to render their services to Harijans.

In **Surya Narayan Chaudhary V. State of Rajasthan** ¹⁵. The Rajasthan High Court permitted the entry of Harijans to temple without purification ceremonies, on a public interest petition. The High Court disposed off the petition with necessary directions in the favour of Harijans. It quoted Article 17 of Constitution abolishing Untouchability, the Untouchability (offences) Act, 1955 renamed as Protection of Civil Rights Act, Article 35(1) (ii), Article 338 and 46 which deal with the present problem.

The court pointed out that under the Nathdwara Temple Act, the state government had the power of general superintendence over the temple administration. Therefore, it could prevent infringement of Constitutional or other legal provisions. It had a duty to prevent hostile discrimination, the court held. It further ruled that every devotee, including the Harijan who want to enter the temple, shall be permitted to do so in accordance with the general practice. Harijans shall not be subjected to additional conditions. The purification ceremonies shall be discontinued as it violated Articles 14, 15 and 17 of the constitution. “The govt. must also take strict steps to ensure that there is no further mockery of this constitutional guarantee and offenders, if any, are promptly dealt in accordance with law”. The govt.

undertaking was noted and it was asked to keep law and order. On the other hand, those who claimed public interest were asked not to “use the Harijans as pawns on the political chess board”.

In **Asiad Project Workers case** ¹⁶ the Supreme Court has held that the fundamental right under Article 17 are available against the private individuals and it is the constitutional duty of the state to take necessary steps to see that these fundamental rights are not violated. It should also be noted that Article 15(2) also helps in the eradication of untouchability. Thus on grounds of untouchability no persons can be denied access to shops, public restaurants hotels and places of entertainment or the use of wells, tanks, bathing ghats, road and places of public resort maintained wholly or partly out of state funds or dedicated to the use of general public.

In **State of Karnataka V. Appa Balu' Ingale** ¹⁷, the respondents were tried for offences under sections 4 and 7 of the Protection of Civil Rights Act, 1955 and convicted and sentenced to undergo simple imprisonment for one month and a fine of Rs. 100 each. The charge against the respondents was that they restrained the complainant party by show of force from taking water from the a newly dug up bore well (tube well) on the ground they were untouchables. The High Court acquitted them. The Supreme Court upheld the conviction. The Court held that the object of Article 17 and the Act is to liberate the society from blind and ritualistic adherence and traditional belief which has lost all legal or normal base. It seeks to establish new ideas for society – equality to the Dalits at par with general public, absence of disabilities, restrictions or prohibitions on grounds of caste or religion.

In **Jai Singh V. Union of India** ¹⁸. The Rajasthan fully upheld SC/ST (Prevention of Atrocities) Act, 1989, as it attempts to abolish

untouchability and caste differences in tune with the constitutional mandate of Article 17.

However, Article 17 suffers from same serious draw backs. The word “untouchability” lacks precision since it has not been defined under the Constitution. Legally it means untouchability on grounds of descent, caste, race or religion. But untouchability is prevalent throughout the country in much devastating form. The whole society suffers from this evil and untouchability has been a great obstacle in securing social, political and economic equality in caste ridden society like ours. Likewise, the expression “any disability arising out of untouchability” needs a clear definition or an illustrative elucidation for the enlightenment of both the judiciary and the general public. The Constitution however, authorises parliament to make law prescribing punishment for any offence envisaged by Article 17 except as otherwise provided in clause (b) and sub-clause (ii) of clause (A) of Article 35. This power was assigned to Parliament alone and not to the State Legislatures with a view “to ensuring uniformity of legislation on the subject throughout the nation” ¹⁹. According to Dr. B.R. Ambedkar.

Inspite of these Constitutional and several legal provisions, India cannot claim to have uprooted the evils of untouchability which has become a cancer of our body-politic. As a matter of fact, legislation is not the only remedy since the abolition of untouchability requires active public corporation. In recent years atrocities on Harijans are on increase and have

taken a menacing form. Thus abolition of untouchability badly needs sincere efforts not only on the part of government but also from the general public as well. The government with the active Support of public leaders, social reformers and people in general must create a social order in which Harijans can live as rightful citizens of a free and democratic country. Until this condition is not created we cannot claim to be a democratic sovereign republic.

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CHAPTER V (E)

PROTECTION OF RIGHTS OF CULTURAL MINORITIES

The democratic federal polity to which India belongs presents a peculiar combination of tolerance and accommodating minority's willingness to assimilate with majority without surrendering its identity and thereby contributing towards the mainstream of the national life.

In a secular state the division of minority and majority on the basis of religion was the innovation of British Government which led to division of territory into two sovereign states-India and Pakistan, should not have been accepted by the framers of the constitution because it negates the very idea of secularism. Minority versus majority concept has created many problems after independence and resulted in tensions, riots and clashes between the two major religious communities when the basic philosophy of right to equality and equal protection of law has been accepted as the fundamental principle for the governance of the country, the specific provision for the protection of minority, its denomination, property and institution frustrated the majority. In a sovereign, democratic republic which is committed to secularism, should not divide the society in minority – majority panorama whether it be based on religion, language, creed or clan. A division of community on economic ground may be justified for imparting social justice to the lowest echelon of the society but division based on religion or language is a threat to the national unity and integrity.

In spite of multifarious diversities the paramount national goal is to maintain unity and integration failing which the one sovereign republic may result in many independent nations. The Fundamental Right to equality and equal protection before law includes equal treatment by state machinery in all walks of life of an individual irrespective of his religion, race, caste,

creed or sex. There are special provisions for the protection of interests of minorities under Article 29 and 30 of the Indian Constitution.

The philosophy of secularism does not mean state apathy to any religion but state's neutrality and similar treatment to all religions provided the particular religion may not prejudice the national interest particularly the unity and integration.

(i) WHO ARE MINORITIES:

The term minority grammatically means, the smaller number of the two aggregates that together constitute a whole. Encyclopaedia Britannica¹ defines minorities as groups held together by ties of common descent, language or religious faith and feeling themselves in these respect from the majority of inhabitants of a given political entity.

The term minority includes only those non-dominant groups in a population which possess and wish to preserve stable ethnic, religious or linguistic, trading of characteristics markedly different from those of the rest of the population².

A particular religious community may be in majority in a particular place but in minority for the total population, secondly determination of linguistic minority is a difficult task because persons of all religions at a particular region may constitute a linguistic minority for the total population. The Hindu community, which every one places as a majority community may be well placed in minority groups on the bases of different modes of worship, worship of different deities, adoption of different and diverse rituals and ceremonies and speaking of different dialects and languages. Jains, Sikhs and Buddhists though fall within the broader meaning of the term Hindu are constitutionally placed in the category of minorities.

(ii) MINORITY IN INDIAN CONTEXT:

The word 'minority' has been used in Article 29 and 30 of the Constitution but it has not been defined anywhere in the Constitution. Indeed, this omission was deliberate one. The framers of the Constitution left it for the Legislature and Judiciary to give it a meaning according to the situation and circumstances of the case. The Supreme Court for the first time gave definition of the term minority as 'a community which is numerically less than 50%. Even then the question is not fully answered, namely, 50% of what population? Is it 50% of the entire population of India or 50% of the population forming part of the Union ³. The Court refused to take unit or district or sub division or a taluka or a town, or its suburbs or a municipality or its ward for determining the question of minority. The Court observed that when a Bill is passed by a State Legislature which extends to the whole of the state, the minority must be determined with reference to the entire population of the state ⁴. If the Act has application throughout India, the minority must be determined with reference to the population of the entire country.

The definition given by the Supreme Court in **Re Kerala Education Bill case** was followed by the Kerala High Court where it observed that Christians at the 1961 census constituted only 21.22% of the population of the state of Kerala, and the Roman Catholics who formed a section of that community are minority within the meaning of Article 30(1) of the Constitution ⁵. The Supreme Court again reiterated the same view while considering the issue whether the Arya Samaji were a minority, and found that 'Arya Samaji who are part of the Hindu Community, in Punjab are a religious minority and they have a distinct script of their own, which entitled them to invoke the guarantees under Article 26(1), 29(1) and 30(1) of the Constitution ⁶.

It is submitted that the definition attempted by the Supreme Court is solely based on numerical strength. K.K. Wadhwa ⁷ pointed out that certain difficulties may arise from the application of said formula. The first one is that the population in a state may be so heterogeneous that no single community may constitute more than 50% of the state population. The second one is about this definition is that there might be certain communities which are in majority in case of states but in minority in case of the union. Thus in first difficulty all groups may claim the title of minority difficulty and in second difficulty communities shall be having double status of being in majority at one context and at the same time in minority in different contexts. According to him, minority in India is a relative term. It is primarily a political and not merely a numerical concept ⁸. He gets support from what Dr. B.R. Ambedkar explained the term minority in Constituent Assembly Debates, "The word is used not merely to indicate the minority in technical sense of it but also indicate minorities in the cultural and linguistic sense" ⁹.

(iii) CRITERIA FOR MINORITY:

According to Article 29 and 30, the criteria for determining the minorities can be language, religion script or culture. Thus, only three categories of minorities have been recognized. Any group to claim minority should prove that their case is drawn on the basis of language, religion or culture.

(a) LINGUISTIC MINORITIES :

The term linguistic minorities has been defined by the commission. For Linguistic Minorities ¹⁰ as minorities residing in the territory of India, or any part thereof, having a distinct language or script of their own. In other words, a linguistic minority at the state level means any group of people whose mother tongue is different

from the principal language of the state and at the district and taluka levels, different from the principal language of the district or the taluka ¹¹.

(b) RELIGIOUS MINORITIES:

Religion may be another criteria for determining the status of minority. Religion has a strong tendency of unifying large sections of people who would otherwise have remained fragmented. On the other hand, it has diversifying tendency also i.e. religion cannot separate man from man, group from group and nation from nation. In India, every aspect of life, i.e. from birth to death is impregnated with religious sentiments. There is nothing which is not religion in India ¹². Hinduism is the religion of the majority and all other religions belong to the category of religious minorities.

(c) CULTURAL MINORITIES:

Culture is a collective name for material, social, religious and artistic achievements of human groups, including traditions, customs and behavior patterns, all of which are unified by common belief and values. Values provide the essential part of a culture and give it its distinctive quality and tone ¹³. It is not a single item, either of area, language or script. It is vast ocean, including the entirety of the heritage of the past of any community in the material as well as spiritual domain whether we think of arts, the learning, the sciences, the religion of philosophy, culture includes them all and much also besides ¹⁴.

Keeping in view the above definitions it is very difficult to determine culturally who is in minority and who is in majority. Dr. S. Radha Krishan put the remark as :

"India is sympany where there are, as in orchestra,

*different instruments each with its particular seniority,
each with special sound”¹⁵.*

It is submitted that culture being a vague term is quite unsafe criterion of categorising minorities.

(D) ARE BACKWARD CLASSES (INCLUDING SCHEDULED CASTES AND SCHEDULED TRIBES) MINORITIES:

The controversy is that whether backward classes should be considered as minority or as a depressed segment of Hindu community. According to Dr. B.R. Ambedkar the Scheduled Castes are really a religious minority. The Hindu religion by its dogma of untouchability has separated the scheduled castes from the main body of the Hindus in manner which makes the separation far more real and far wider than the separation which exists either between Hindus and Muslims or Hindus and Sikhs, or Hindus and Christians¹⁶. S. Nagappa¹⁷ put a splendid remark that :

*“We are a political minority, because we are not recognised
all these days and we are not given our due share in the
administration of the country”.*

In the same tone Muniswami Pillai¹⁸ asserted that, untouchables who form one-sixth of the population of this sub-continent are a minority community, because their social, political and educational advancement is in a very low state.

The contrary views have been expressed by K.M. Munshi and Seth Govinddas. According to K.M. Munshi:

*“the Harijans generally known as the scheduled castes,
are neither a racial minority nor a linguistic minority,
nor certainly a religious minority. The Harijans are the*

part and parcel of Hindu Community” ¹⁹.

According to Seth Govind Dass:

“the Harijans are in fact Hindus; they are not a minority like the Muslims or the Christians” ²⁰.

Prof. V.C. Sarkar analysed the similarity and dissimilarities between minority and backward classes. There is a lot of difference between minority and backward class though both of them imply some weakness. The former is indicative of weakness in number and the latter means the weakness of intellectual level and cultural progress. But in a democratic rule, controlled by majority both could be subjected to tyranny, oppression and injustice ²¹.

K.K. Wadhwa’s definition of minority seems to be a suitable definition in the Indian context, which is as under:

‘Any section of the citizens, being small in number in a definite area, in respect of religion, language or any other ground, seeking equal or any other ground, seeking equal or preferential treatment either to maintain its identity or to be assimilated with the majority, is a minority’ ²².

(E) PROTECTION OF MINORITIES UNDER THE CONSTITUTION:

Minorities are classified in two categories (1) minorities at will; and (2) minorities by force. The minorities at will in order to maintain their distinctiveness as a group compensate for their numerical or social inferiority, wanted to be protected by way of giving some special privileges. They regard it essential that the education of their children should be in accordance with the teaching of their religion and they hold, quite honestly, that such an education cannot be obtained in ordinary

schools designated for all the members of the public. They desired that the education should be imparted to their children in an atmosphere congenial to the growth of their culture. Whereas the minorities by force want assimilation with the general community, as they feel that such assimilation will bring homogeneity and they will be within the fold of the national main stream. 'Minorities by force' do not want to maintain their identity separate from that of the majority. They claim protection or privilege not to maintain their identity separate from majority but bring themselves at par with that of the majority. In other words, the protection and privilege they claim is for the time being, i.e. they reach to the level of majority.

Indian Constitution makers recognised the validity of their claim and to allay their fears conferred on them (minorities), the Fundamental Rights. The Constitution has guaranteed certain cherished right to the minorities concerning Cultural and Educational Rights, their language, culture and religion. These guarantees have been conferred on minorities for good and valid reasons.

Article 29(1) provides that any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same. This constitutional provision, therefore, protects the language, script or culture of a section of citizens. If a section of citizens have a distinct language, script or culture of its own, they will have the right to conserve the same ²³.

Article 29(2) guarantees that admission is not being denied into any educational institution maintained by the state, or receiving aid out of state funds, on the grounds only of religion, race, caste, language or any of them. This provision guarantees the rights of a citizen as an individual irrespective of the community to which he belongs ²⁴.

According to Article 30(1) all minorities whether based on religion or language, shall have the right to establish and administer educational institutions of their own. Whereas Article 30(2) prohibits the state to discriminate in granting aid to educational institutions. It provides that “the state shall not in granting aid to educational institutions discriminate against any educational institution on the ground that it is under the management of minority, whether based on religion or language.

Special protection given to minorities was challenged as discriminatory against the majority ²⁵. The matter was not finally decided by the Supreme Court as the State promised not to enforce the impugned law against the majority in the event of its being declared unconstitutional. Later on, Chief Justice Ray as he then was, in **Ahmedabad St. Xaviers college society v. state of Gujarat** ²⁶. While justifying the special protection conferred on minorities observed that the whole object of conferring the right on minorities under Article 30 is to ensure that there will be equality between majority and the minority and if the minorities do not have such special protection, they will be denied equality .

In the case **Khan Abdul Hamid v. Mohd. Haji Polytechnic** ²⁷ the Bombay High Court says that a restriction prescribing that a certain percentage of students belonging to ST should be admitted even by non-governmental polytechnics in Maharashtra was not applicable to minority institution. In the ruling, the High Court dismissed the petition and held that Article 30 (1) was absolute in terms. It could not be made subject to reasonable restrictions as other fundamental rights. The High Court further said that a regulation which prescribed a certain percentage of seats to backward classes for tribes might be in Public interest. It might be in the interest of bringing up the educational level of those people. But such

regulation could not be regarded as conducive to the improvement of the quality of the education.

(a) RIGHT TO CONSERVE:

Article 29(1) intends to preserve the special traditions and characteristics of the minority which distinguish it from the dominant group. The love for one's language and religion is eternal and universal. Since every minority would like to jealously retain and protect its particular features, so the right of conservation used in the constitution is not limited to the literal meaning 'to retain or to preserve'. It includes both positive and negative aspects. Right of conservation, according to D.K. Sen, includes the following rights:²⁸

- (i) The right to profess; practice and preach its own religion, if it is a religious minority;**
- (ii) The right to follow its own social moral and intellectual way of life;**
- (iii) The right to impart instructions in its tradition and culture.**
- (iv) The right to perform any other lawful act or to adopt any other lawful measure for the purpose of preserving its culture.**

The Supreme Court of India has also interpreted this word liberally. The right to conserve includes the right to agitate for the protection of the language. Therefore, promise by a candidate to work for the conservation of the electorate's language does not amount to corrupt practice²⁹. Similarly legal provision requiring the G.N.D. University to promote studies and research in Punjabi language and literature, and to undertake measures for the development of Punjabi language, literature and culture, does not infringe Article 29(1). The Court reminded that the promotion of the majority language does not mean the stifling of the minority language or

script. To do so will be trespass on the rights of those sections of the citizens which have distinct language or script and which they have the right to conserve through their own educational institutions³⁰. The scope of the Article to conserve seems to be extra ordinary wide and meaningful for the minorities in India. It gives an assurance to the minorities that their language, religion and culture will be guarded, and they will be able not only to conserve the same, but a definite development also can be made by them³¹.

(b) ADMISSION TO AIDED EDUCATIONAL INSTITUTIONS:

The benefit of Article 29(2) can be availed by all groups of citizens (whether belonging to minority group or majority group) in the matter of admission to the educational institutions maintained or aided by the state. There is no bar to any community maintaining its own educational institutions. If such an institution wanted state aid, it must throw open its doors to members of all classes of persons irrespective of their religion, community or language³².

The Supreme Court from the very beginning was conscious of the fact that real interest of Indian democracy can be reserved only if the impact of religion on community is reduced. In the very second year of establishment the Supreme Court frustrated the attempt of the Madras Government reserving seats on communal grounds in medical and engineering colleges³³. The Court held that the classification in the Government order was based on religion, race and caste which was inconsistent with Article 29(2).

In **State of Bombay v. Bombay Education Society**³⁴. An order issued by the Bombay Government banning admission of those whose language was not English to a School using English as a medium of instructions. It was argued on behalf of the state that the order did not debar

citizen from admission in to English medium schools only on the ground of religion, race, caste language, but on the ground that such denial would promote the advancement of the national language. The Supreme Court while declaring the order unconstitutional as violative of Article 29(2) observed that the immediate ground for denying admission in English Schools to pupils whose mother tongue was not English, was only language. The court further observed that:

*“To limit this right only to citizens belonging to minority groups will be to provide a double protection for such citizens of the majority group have no special educational rights, the nature of a right to be admitted into an educational institution for the maintenance of which they make contributions by way of taxes. We see no cogent reason for such discrimination”*³⁵.

But it is difficult to accept that in not holding entrance examination in any particular language, amounts to denial of admission on the ground of language³⁵.

Where the reservation of seats is based on residence, provisions of Article 29(2) cannot be invoked similarly a candidate who does not fulfil minimum qualification and hence refused admission, or a candidate who has been expelled on the ground indiscipline cannot invoke Article 29(2).

In **Suneel Jaitley v. State of Haryana**,³⁷ the state Government reserved seats in medical colleges for students passing out class VIII from rural schools. The Supreme Court while declaring the reservation as unconstitutional observed that education up to eight class hardly had any relevance to medical education and thus there was no nexus between the basis of classification and the object sought to be achieved.

(c) EDUCATIONAL RIGHTS OF MINORITIES:

One of the most important methods of conservation of a language, script or culture is through educational institutions. In the words of J.A. Loponce, 'the School is to a Language what the Church is to a religion, the condition is of survival ³⁸. Hence the great importance is attached to linguistic minorities to freedom of education'.

The Supreme Court while emphasizing the importance of educational rights of minorities observed that it intended to develop the commonness of boys and girls of our country. This is in true spirit of liberty, equality and fraternity through the medium of education. The Court hopes that general secular education will open doors of perception, and act as the natural light of mind of our countrymen to live in the whole ³⁹.

Under Article 30, the minorities based on religion or language have four types of right :

- (i) the right establish educational institution**
- (ii) the right to administer educational institutions;**
- (iii) the right to determine the nature of their educational institutions at their own choice; and**
- (iv) claim non-discriminatory grant of aid from the state.**

(d) MINORITY'S RIGHT TO ESTABLISH EDUCATIONAL INSTITUTIONS:

Minorities based on religion or language have Constitutional right to establish educational institutions of their own choice. The phrase right to establish includes the right to bring in to existence ⁴⁰. Educational institutions are one of the best media for the conservation of language, script or culture and help the minorities in conservation of their distinct language, script or culture.

The question whether the minorities right to establish educational institution is limited to the purposes mentioned in Article 29(1) only, or it is extended to imparting secular education ?

The Supreme Court in **Re Kerala Education Bill** ⁴¹ opined that Article gives certain rights not only to religious minorities but also to linguistic minorities. It confers rights on such minorities to establish educational institutions of their choice. It does not say that minorities based on religion should establish educational institutions for teaching religion only or that linguistic minorities should have the right to establish educational institutions for teaching their language only ⁴².

In **Managing Board M.T.M.V. State of Bihar**, ⁴³ the Supreme Court has emphasized that the right to establish educational institutions of their choice must mean the right to establish real institutions which will effectively serve the needs of their community and the scholars who resort to them. The provisions of Industrial Disputes Act, 1948 cannot be invoked to interfere with the right to establish ⁴⁴.

In **Ahmedabad St. Xavier College v. State of Gujarat** ⁴⁵, the Supreme Court again rejected the plea to restrict the scope of Article 30(1) to purposes given in Article 29(1) as both Article deal with different matters, one provides for conservation of language script or culture whereas other deals with the right to establish and administer institutions by the minorities of their choice.

The right to establish educational institutions of their choice given to minorities under Article 30(1) however, is not absolute. The minority who wants to establish or bring into existence any educational institution it has to seek the approval of the Government for its location.

(e) **STATE REGULATIONS ON MINORITIES INSTITUTIONS:**

The right to establish educational institutions conferred on minorities will remain force, if the right to administer the same has not been given to them. Therefore, Article 30(1) confers both the rights on the minorities. The 'administer' used in Article 30(1) should be given wider interpretation and minorities should have full autonomy in the administration of educational institutions.

It is necessary that those who establish an institution should administer it. It would be enough if the members of the same minority community administer the institution. The members of the minority community may form themselves into a society registered under the society. Registration Act, 1860 and the administration of the institution may be done by the society ⁴⁶. Even an individual belonging to minority community may establish educational institution with his own means and funds will be covered by Article 30(1), provided that institution must have been established for the benefit of the minority community.

The minority community who claims privilege under Article 30(1) must be minority of persons residing in India. Article 30(1) does not confer on foreigners. Persons setting up educational institutions must be resident in India and they must form a well established religious and linguistic minority ⁴⁷.

Now the question arises, to what extent state can interfere in their right to administer their educational institution. This question has been answered by the Supreme Court in **Re Kerala Education Bill, Case** ⁴⁸, where it observed that the state can interfere with the administration but, such regulation will have to satisfy two more conditions besides the usual test of public interest, i.e., the regulation must be reasonable and it should be conducive to making the institution an effective vehicle of education for

minority community or other persons who resort it. Therefore, the state regulation must satisfy dual test, i.e., test of reasonableness and being conceive to minority institutions ⁴⁹.

Administration means management of the affairs of the institutions. The Supreme Court in **State and Kerala v. Rey Mother Provincial** ⁵⁰ while dealing with the right under Article 30(1) and the extent of the state's power of regulatory control observed.

“Administration means management of affairs of the institution. This management must be free of control, so that the founder or their nominees can mould the institution as they think fit and in accordance with their ideas of how the interests of the communities in general and the institution in particular will be best served. No part of this management can be taken away and vested in another body without an encroachment upon the guaranteed right”.

The court pointed out that the Standards of education are not the part of the management as such. Such Standards concern the body politic and are dictated by considerations of the advancement of the country and its people. To a certain extent the state may also regulate the conditions of employment of teachers and the health and hygiene of students. Such regulations do not bear directly upon management as such although they may indirectly effect it. At the same time the court pointed out that the minority institutions cannot be allowed to fall below the standard of excellence expected of educational institutions or under the guise of exclusive right of management to decline to follow the general pattern ⁵¹. The University make it obligatory on the minority educational institutions affiliated to it to teach all the subjects in a particular language only ⁵².

The right to administer can be tempered with regulatory measures to facilitate smooth administration. Regulations which serve the interests of the students and teachers are of the paramount importance in good administration⁵³. For efficient and smooth administration the state can take regulatory measures. The right to administer an educational institution of their choice cannot mean a right to mala administration. This right does not necessarily militate against the claim of the state to insist that in order to grant aid the state may prescribe reasonable regulations to ensure the excellence of the institution to be aided. But, the State Government cannot take the management, in public interest⁵⁴.

The University can prescribe regulations and insist that they should be complied with before it would grant affiliation or recognition to an educational institution. To deny such power would result in robbing the concept of affiliation or recognition of its real essence. But the state cannot shackle and trench seriously upon the right to administer by management⁵⁵, by imposing special constitution of its choice⁵⁶. The State Government cannot refuse to recognize a minority teacher's training college when the inspection committee after inspection recommended for its recognition⁵⁷. The Bihar Universities Act, which provided, inter alia that appointments, dismissals removals and termination of services by the governing body of the college were to be made on the recommendation of University Service Commission and subject to the approval of the University, empowering the commission to recommend to the governing body names of the persons in order of preference and provision that governing body will not appoint a person who has not been recommended by the University Service Commission was struck down as violative of Article 30(1) as it completely took away the autonomy of the governing body of the college⁵⁸.

The State Government cannot require from the school establish by minorities to constitute a managing committee in accordance with an order of the state ⁵⁹. Similarly the State cannot interfere in the matter of appointment of Head Master in a minority Institution because they require a person in whom they can repose confidence ⁶⁰. But the state can prescribe that Principal and Senior most teacher of the college will be necessarily included in the governing body of every affiliated college because of its intramural character ⁶⁰. This case has indirectly robbed the administration of its right. After this ruling, the promotional regulatory measures may demand even the restructuring of a minority's governing body ⁶².

The Vice-Chancellor cannot direct the management of a minority institution to allow a particular person to function as principal who has been dismissed by the management ⁶³. The right of the minority institution to take disciplinary action against the teachers and employees is a very vital aspect of managements fundamental right to administer the institution. Although procedural safeguards may be laid down, the final power to take disciplinary action must vest in the management of the institution and be not subjected to the control or veto of any outside body ⁶⁴. The Supreme Court re-affirmed this opinion in **Mrs. Y. Theelamma v. Union of India** ⁶⁵ but with some reservation. The reservation is that the state can provide for prior approval of directors as a mandatory requirement before suspension order is issued.

(f) GRANTS IN AID TO MINORITY INSTITUTIONS :

Aid is very essential for the effective development of educational institutions. Therefore in order to give effective protection to the right conferred under Article 30(1) the framers of the constitution under Article 30(2) provided that the state shall not, in granting aid to educational institution discriminate against any educational institution on the ground

that it is under the management of a minority whether based on religion or language.

Article 30(2) has a two-fold objective. In the first place, it implies that an educational institution belonging to a minority is entitled to ask for aid from the state. Secondly, it also means that the conditions under which grant-in-aid should be available to minority educational institution must be the same as for all other educational institutions ⁶⁵. It clearly leads to the result that minority institutions have a right to equality in receiving aid ⁶⁶.

Article 28(2), 29(2) and 30(2) contemplate for the grant of state aid and Articles 41 and 46 charge the state with the duty of aiding educational institutions and promoting such interests of the minorities. Aid serves two purposes. Firstly, it helps in supporting the weak entities, and secondly, it enables the beneficiaries to assert independence of the final dependence. But it should not be forgotten that while granting aid, the state can impose certain regulatory measures. However, the state should not compel the institution to surrender minority's right of administration. The state aid is a potent agent to coax minority institutions to practice the constitutional creed of equality but not to covert by coercion ⁶⁸.

To what extent these aids can exert influence on the Fundamental Right to administer, the Supreme Court in **Re Kerala Education Bill** ⁶⁹ laid down guidelines that (1) the aid is not to be used as an instrument to force the minority institution to surrender their right to administration guaranteed under Article 30(1); (ii) the right to administer, is not however, a right to mal administration; (iii) minority cannot surely ask for aid or recognition in unhealthy surrounding, without any competent teachers, without a fair standard of teaching or with teaching matters subversive of the welfare of the scholar; (iv) the state may insist that in order to grant aid or even

recognition, it may prescribe reasonable regulations to ensure the excellence of the institutions to be aided.

In **Sidhrajibhai v. State of Gujarat** ⁷⁰ the Government order, requiring the petitioner Christian Society's Teachers Training College to reserve 80% seats for government nominees for admission accompanied by threat to withdrawal aid was held to be an infringement of Fundamental Right Conferred under Article 30. The Court observed that "regulations which may lawfully be imposed either by legislative or executive action as a condition of receiving grant or of recognition must be directed to making the institution, while retaining its character as a minority institution, effective as an educational institution" ⁷¹. The State can ensure by regulations that the aid is utilised for the purpose of which it is granted ⁷².

(g) ACQUISITION OF PROPERTY OF MINORITY EDUCATIONAL INSTITUTION:

By the Constitution 44th Amendment Act, 1978, Article 30 (1A) has been added. This Article provides that in making any law providing for the compulsory acquisition of any property of an educational institution establish and administered by a minority, referred to in clause (1), the state shall ensure that the amount fixed by or determined under such law, for the acquisition of such property, is such as would not restrict or abrogate the right guaranteed under that clause. The effect of this provision is that while fixing the amount of compensation the state has to ensure that acquisition does not affect the right under clause (1), i.e., the financial capacity and resourcefulness to establish and administer educational institutions shall not be put to any detriment.

Undeniably the state has the right to acquire property belonging to any institution including minority institution. This provision enables the

minority institution to approach the court of law, when their property has compulsorily been acquired by the state on the ground that the compensation paid in lieu of acquisition is not just. This provision has negated what has been achieved through 44th Amendment to the Constitution. It conferred that right on minorities which is not available to any other citizen or majority institution. Although actual implications of Article 30(1A) are not clear, it has certainly created a state of confusion. The question arises whether by invoking this provision the minority institution can claim fair and just compensation from the state, when the state has acquired its property for public purposes. If the answer to this question is yes, then this provision is certainly a retrograde step and goes against the preambular promise of the constitution which promises, justice – social, economic and political to all citizens particularly the lowest strata of the society; and if the answer to this question is no, then this provision becomes meaningless. This provision indeed poses a paradoxical and difficult situation in practical terms.

(F) MINORITY VIS-À-VIS MAJORITY:

India is a welfare state. It caters to the needs of the individuals from cradle to the grave. Its cherished goal is the greatest good of all, which is the philosophy of *savodaya*. It is concerned with the well being of all the people equally, without discrimination, and irrespective of any consideration. The preamble and the Directive Principles of State Policy as enshrined in the Constitution of India, foreshadow the emergence of such a state.

Due to the adoption of democratic system in India, it recognizes equal rights and duties for all irrespective of religion, race, caste or language. So it is only democracy that recognizes different minorities and

provides them equal treatment because the efficiency of democracy lies in giving fair treatment to minorities. This helps in creating the feelings of confidence to the members of the minorities that they will not be discriminated against the majority, and they will be allowed to retain and develop those characteristics which have set them apart from the majority, while still meeting the equally genuine fears of the majority community that continued acquiescence in what are seen as 'minority extremist demands' does not lead to the fragmentation of the nation and the generation of separatist demands⁷³.

In fact, religion – based division of minority v/s majority threatens the social solidarity, unity and integrity of the nation. The minority communities lay claim of special position, privilege and protection under the Constitution, particularly the Muslim minority seeks exemption of legislative enforcement in its personal laws on the ground that the law based on Quran and Sunnet is immutable being an integral part of their religion.

When the provision relating to Uniform Civil Code was placed before the members of the Constituent Assembly, the Muslim members opposed it. Mr. Hussain Imam stated that the majority did not have the safeguards because they are the majority and nothing can be passed in the legislature without their full consent and concurrence whereas the minority has not got this privilege and therefore, it is necessary that the personal laws of Muslims and other Minorities who so desire should be preserved from interference by the legislature ⁷⁴. The question of minority v/s majority cropped –up even before independence and the national leaders of contemporary period thought it fit to please and appease Muslims by keeping provision for their protection under Fundamental Rights. The Muslim fundamentalists were least worried about their education and

economic upliftment or a commitment for the basic values of democracy and socialism. The rise of Hindu Communalism added fuel to the fire and the reactionary. Muslim Communalists have exploited the situation fully to wean away the Indian Muslims from the common democratic way of life. They have fostered among them a narrow communal and separatist outlook. This created a wide gulf between minority and majority. The reality is this that the community should not be divided into religion based minority or majority in the sovereign, Democratic, Secular Republic. Every person should be regarded first as an Indian national and then he should be categorized on the basis of socio-economic status. Religion – based division cuts the very root of secularism, integrity and unity of the nation.

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CHAPTER - V(F)

DR. B.R. AMBEDKAR ON EQUALITY BEFORE LAW AND EQUAL PROTECTION OF LAW

The real Contribution of Dr. B.R. Ambedkar is reflected in the protective discrimination scheme of the reservation policy of the government envisaged under some provisions of part III (fundamental rights), and many of part IV provisions dealing with the Constitutional mandate to ameliorate the conditions of the so-called Scheduled Castes and Scheduled Tribes and other backward classes. Provisions like Article 17 prohibiting untouchability, Article 30 dealing with the protection of minorities, Article 32 guaranteeing the citizens constitutional right to enforce the fundamental rights in courts of law etc. are some of the notable examples.

Article 15(4) and 16(4) of part III and part XI, and schedules V and VI dealing with the upliftment of Scheduled castes and Scheduled Tribes speaks clearly about the substantial and significant contribution of Dr. B.R. Ambedkar for the development of the unfortunate untouchables who continue to suffer under the clutches of caste imperialists and religious fundamentalists of Modern India.

Thus, these significant contributions of Dr. B.R. Ambedkar, the illustrious son of India and the unquestioned leader of the downtrodden and depressed classes of people in India, one can very easily discern the impact of western political philosophy and culture on the personality of Dr. B.R. Ambedkar which he imbued during his stay mostly in U.S.A. and England. And therefore, the original contribution of Dr. B.R. Ambedkar we find in his life mission the abhorrent and inhuman practice of untouchability developed. Undoubtedly, the unique contribution of Dr. B.R. Ambedkar could be seen from the relentless battle he fought like 'Bhima of

Mahabharat' against the social leprosy in the form of Casteism, untouchability and Hindu religious fundamentalism manifested in the abominable practice of "Chaturvarna" or 'Vanrasrama Dharma" placing the three high castes, Brahmins, Kshatriyas and Vaishyas on the higher pedestal relegating the Hindu religious minorities, such as the unfortunate untouchables to the inferior positions of inhuman professions like sweeping, scavenging and thus cleaning the dirt and filth of the villages and towns. Therefore he made it his life mission to uplift the untouchables and the other downtrodden masses from the unequal position of inferiority to that of unequal position of parity in socio-economic status with other high caste Hindus. It was for achieving this goal the reservation policy or the scheme of protective discrimination was advocated and achieved by him for ten years at least to ameliorate the conditions of the various depressed and down trodden sections of Hindu society. It would be a matter of great interest to note here that Dr. B.R. Ambedkar was against the policy or perpetual reservation system for the simple reason that it would perpetuate inferiority amongst the reserved categories who should develop themselves on the basis of self-reliance and self-help by developing self-confidence but not on the charity of some body else. Reservation policy is not a matter of charity but a legal obligation on the part of government to improve the lot of the innocent neglected sections of Indian population. Being a great humanist Dr. B.R. Ambedkar always stood for very high standard of human values, dignity of human persons or individual. However, his struggle for fundamental human freedom and the socio-economic emancipation of untouchables, his dream about the creation of egalitarian social order still remains an unfulfilled wishful thinking despite the extended period of reservations for SC's and ST's for another four decades and the same was extended to fifty years in January 1990 by 62nd Amendment to the

Constitution of India. And hence, the plea for retention of reservations for SC and ST so long as untouchability continues. It is also argued by legal Scholars like Justice Krishna Iyer that the required change and development amongst the untouchables and other backward sections and the cherished goal of egalitarian social order cannot be achieved unless and until the forward among the backward and the elitist groups amongst SC's and ST's are eliminated and the Constitutional mandate is strictly carried out with commitment seriousness and sincerity by the executive entrusted with the onerous task of implementation of the scheme.

The Constitution of India has sustained all these years and passed through critical and turbulent periods in the history of our nation. The Constitution is not bad and unworkables. It is the men who are interchange of it that matters ¹.

In order to assert the right of equality, Dr. B.R. Ambedkar undertook a unique satyagraha at the famous Chowdar Tank at Mahad, along with his followers on March 20, 1927. They burnt Manusmriti at Mahad on December 25, 1927 as a protest against inequality provided under it. During this period he started 'Bahishkrit Bharat' a fortnightly², on April 3, 1927. It continued upto November 15, 1929. He formed Samaj Samata Sangh (Social equality organisation) on September 4, 1927 and Samat Sainik Dal (equality volunteer Army) in December, 1927 to bring a new vigour and militancy to the march of equality. Dr. B.R. Ambedkar believed in social equality. He said that, "Hinduism; thy name is inequality"³. It is being based on Vedas and Shastras, he had stated that we "must destroy the authority of Shastras and Vedas"⁴.

Dr. B.R. Ambedkar's whole life was a mission aimed at the emancipation of the depressed classes from untouchability casteism, ignorance, irreligion, poverty and exploitation. The philosophy of Dr. B.R.

Ambedkar is however so wide and comprehensive that it covers social, economic, political, educational, religious and cultural aspects of human society. His philosophy stands for a new social order based on liberty, equality and fraternity. It stands for a well being of men. It does not believe in any unnatural and inhuman inequalities. It is most scientific and rational as it denies God, Soul, predestined Conditions, and Superstitions. It has no blind faith in scripture. It would not take for granted which is not perceptible and acceptable to human intelligence. His political thoughts which includes thoughts on justice, society state, government, national constitution, minorities, democracy, representation foreign policy, power etc. are of great importance. It is but a fact that his thoughts and movement had great impact on contemporary Indian society.

Dr. B.R. Ambedkar visualized an ideal society based on “liberty, equality and fraternity”⁵. According to him an idealistic society should be mobile and full of channels for conveying a change taking place in one part to other parts. He contemplates a society which is plural in character, but not static, rigid and traditional and orthodox in behaviour. It would give fair and equal chance to each and everybody for their progress and bind all the people into one Common cultural bond. He states that “ethnically all the people are heterogeneous. It is the unity of culture that is the basis of homogeneity⁶”. The unity of culture, obviously could be developed only when the society is based on liberty equality, and social justice.

According to Dr. B.R. Ambedkar there are two types of liberty (1) Civil liberty and (2) Political liberty. Civil liberty includes liberty of movement, liberty of thought, reading and writing and liberty of action. Political liberty consists in right to share in the framing of laws and in the making and unmaking of governments.

Equality means 'moral equality'. It is essentially an ethical value which recognizes equality of opportunity for each and every one. It is true that men are not equal in physical strength, talents, industry and in tests and attitudes. However the principle of equality denies the undue right of strong to exploit the weak. It creates equal opportunities for all without making any unjust distinctions between man and man, such as caste, class, creed or sex.

Fraternity means "fellow feelings". It is a feeling of brotherhood with all human beings. It is "a sentiment which leads an individual to identify himself with the good of others"⁷. Fraternity is, he observes, 'the name for the disposition of an individual to treat men as the object of reverence and love and the desire to be in unity with his fellow beings'⁸. He wanted to maintain justice in the society by establishing the social order on the trinity of liberty, equality and fraternity. He defines justice as "simply another name for liberty equality and fraternity"⁹. However, he gave much more importance to equality. "Fraternity and liberty", he states, are really derivative notions. The basic and fundamental conceptions are equality for human personality. Fraternity and liberty take their roots in these two fundamental conceptions. In short, he visualized a society based on justice, social, economic and political.

Dr. B.R. Ambedkar's approach towards the ideal is pragmatic, result oriented and scientific. An ideal should prove its utility to the society. The social order which strengthens the society, which brings prosperity to the society and which is useful in protecting the society could be called an ideal social order. The society cannot be called an ideal society, only because it has been directed to be so by the religion. It should be properly tested on the anvil of experience. In the words of Dr. B.R. Ambedkar, the value of

the ideal must be tested by its results”¹⁰. It could be said that this approach is as important as the ideal itself. If the ideal is proved to be wrong, there is no harm in rejecting it. It ought to be replaced by a new ideal.

Now the question arises whether the ideal society as contemplated by Dr. B.R. Ambedkar could be brought in to existence ? It is however not impossible to bring into reality the ideal society depicted by him. This could be realized by the following ways.

Firstly, it is necessary to do away with the caste ridden Hindu Social Order. Caste is, of course based on Hinduism. ‘Reason and morality, “ he states, “are the two most powerful weapons in the armoury of a Reformer”.¹¹ They should be put to use. The Shastras or Vedas which teach the religion or caste are not efficacious. Hence, it is necessary “to destroy the belief in the sanctity of the Shastras”, and to make every man and woman free from the thralldom of the Shastras¹². Then they would be willingly ready to interdine and intermarry.

Secondly it is necessary to break the caste-property relations in order to achieve economic equality. For this purpose, Dr. B.R. Ambedkar suggested to accept the scheme of state socialism; in which agricultural land and key industries would be nationalized. Neither these would be forced labour nor dependency. State socialism ensures one man one-value as such every individual would lead his life with dignity.

Thirdly the political structure should be such that every man would be able to get equal share in the power. All the people would enjoy their fundamental rights and fulfil their obligations. Untouchability would be abolished and its practice would be an offence punishable by law. There should be non-parliamentary government so that the problem of minorities

would be solved and they would be able to associate with the national mainstream.

Fourthly, restructuring of the society, socially, economically and politically could be done not by bloody revolutions, but by constitutional means. He had no faith in any unconstitutional or extra constitutional methods like civil disobedience, strike, fasts etc. He contemplated to solve all the problems within the frame work of the constitution. In sum, Dr. Baba Saheb Ambedkar has visualised an integrated society and “persistently laboured to locate the cohesive factors conducive to the creation of integrated society based on an associated mode of life”¹³.

Dr. B.R. Ambedkar gave much importance to equality. “It may be said that equality is the original notion and respect for human personality is a reflexion of it. So that where equality is denied, everything else may be taken to be denied”¹⁴. According to Dr. B.R. Ambedkar Buddhism is but “Perfect Justice” because it, inter alia enunciates equality. He states that men are unequal in physical strength, intelligent capacity and wealth. All have to enter into the struggle for existence, in which if inequality be recognised as the rule of ‘game’ the weakest will always go to the wall. Equality may help the best to survive even though the best may not be fittest. Equality envisages equal opportunity to develop at their fullest. No one should be deprived of what is legitimately due to him¹⁵.

He contemplates justice with three necessary dimensions of social, economic and political justice. He contemplates to secure social justice through constitutional provisions like, equality before law (Article 14), prohibition of discrimination on ground only of religion, race, caste, sex, place of birth or any of them (Article 15(1)). Special safeguards for socially and educationally backward classes for their educational development

(Article 15(4)). Equality in respect of employment opportunity (Article 16(1)). Providing reservations in services for the other backward classes (Article 16(4)). Abolition of untouchability (Article 17) etc. etc.

‘Economic justice’ would be possible through constitutional provisions like, right against exploitation (Article 23) adequate means of livelihood to all men and women (Article 39(a)), no concentration of wealth and means of production to the common detriment (Article 39(b) (c)) ; equal pay for equal work for both men and women (Article 39(d)) etc. etc.

“Political Justice’ would be possible through constitutional provisions like general electoral role (Article 325) based on universal adult suffrage (Article 326); reservation of seats to the deprived section of society in the Lok Sabha and State Vidhan Sabhas in proportion to their population (Article 330, 332). Thus Dr. B.R. Ambedkar tried to break caste-property relations and caste-political power relations.

Dr. B.R. Ambedkar imposes the responsibility of giving justice to all the people in the state. The state, through its constitution is expected to bring such ‘a social order in which justice, social, economic and political, shall inform all the institutions of the national life’¹⁶. He did not believe in stateless society.

He contemplates to bring into reality a just social order by just means only. He has indomitable belief in constitutionalism and peaceful means. In his view, violent means are though sure to give success are disastrous to the society. In a social situation like India, where equality is denied to some people, equality is obvious criterion for justice where social divisions exist in a society, neither all the people would come. Under one banner nor they be able to revolt against the established classes. Therefore

the constitution and the laws are the best means of bringing about a new social order.

However, Dr. B.R. Ambedkar did not deny the efficacy of violence as a last resort. While presenting the constitution to the nation, he very sincerely warned that we will have to remove the inequality from the society as early as possible as it is necessary to lay down the foundation of just and secular society. This was necessary for the creation of ethose in which depressed classes can feel safe and secure.

Since the initiation of the constitution, a new struggle for social justice has been in operation. It could be categorized as a constitutional struggle for social justice. Constitution is a means to an end and not a pious document. He had undoubtedly respect for the constitution but not at the cost of justice. If the means was not capable to fulfil the end, he was prepared to reject the constitution and launch the struggle for justice.

Dr. B.R. Ambedkar very categorically said that “host rights are never regained, by begging and by appeals to the conscience of usurpers, but by relentless struggle”¹⁷. At the later occasion, he explosively exhorted that, “if you want to be effective then you must have guns and not mere soft speech”¹⁸. Thus for the purpose of securing justice he goes to the extent of resorting to wage armed struggle against venomous forces of injustice. However, he did not speak this out of frustration, nor on the spur of the moment. It honestly reflects his indomitable urge for the attainment of justice. He wanted deliberately to inspire and instigate the suppressed people to agitate against injustice at any cost.

Though he had a strong bias for non-violence as a means to an end, he would not get bound with it when the very goal of justice is in jeopardy.

His non violence is not absolute”¹⁹. He does not hesitate to go for violence as a last resort in the struggle for justice.

However in a country like India, where the whole society is divided between high and low castes and creeds, people would not joint the revolution unless they get an assurance that after revolution is achieved every body would get equal share in power and the national resources”²⁰. In other words social revolution must precede the political revolution. In sum Dr. B.R. Ambedkar prescribes peaceful and constitutional means as the safest and most efficacious way to attain justice. To him, ‘individual is an end in himself. Hence, he thinks not only to remove all the hurdles in the way of individual’s progress, but to make available all the necessary opportunities for his progress.

Thus, Dr. B.R. Ambedkar is remembered as a towering figure in India’s social history. His main object in life was to emancipate the so called untouchables from the thraldom of untouchability, casteism, superstitions and social and economic dependence; that too without harming the course of the nation. All his demands were, however aimed at uplifting the scheduled castes on par with the caste Hindus and integrate them with the mainstream on terms of equality. While demanding separate electorate and other privileges for scheduled castes, he had thought of the entire nation as one unit and had the comprehensive vision of the whole society”²¹. For him, development of the Scheduled Castes was a part of the development of the society as a whole. However when the question arose of giving preference either to national interest or the interest of the Scheduled Castes, he preferred the former one and become ready for mutual adjustment.

Thus, Dr. Baba Saheb Ambedkar was a 'man with a mission' in his life and that was the eradication of untouchability and securing political, economic and social justice through appropriate political action. He, however visualized a new social order based on liberty, equality and fraternity, wherein every one would secure justice. In his new social order neither there would be castes nor classes. He was very much objective in his goal. He, however viewed the emancipation of the untouchables as an indispensable part of his wider perspective of justice. For him, society was an organism in which every organ must be equally healthy happy and inseparable. He also thought that caste and class were bound by cause and effect relationship. Therefore, he wanted to break the caste property relations under his state socialism. He desired to incorporate the provision of state socialism in the constitution itself so that it could be beyond the reach of the privileged classes to abrogate it.

(i) DR. B.R. AMBEDKAR AND HIS MOVEMENT FOR SOCIAL EQUALITY:

Dr. B.R. Ambedkar struggled throughout his life for the emancipation of the Dalits from the stigma of caste and untouchability. His struggle was directed against oppression and exploitation of man against man and man against woman as well. He held the view the Hinduism was responsible for the disorganisation and denationalization of society at particularly the deplorable condition of the untouchables. Thus he observed:

“The religion which discriminates between followers is partial and the religion which treats crores of its adherents worse than dogs and criminals and inflicts upon them insufferable disabilities is no religion at all. Religion is not the appellation for such an unjust social order” ²².

Dr. B.R. Ambedkar organised social reform movements under the banner of Bahiskrit Hitakarini Sabha (1924) to bring about socio-religious and political consciousness among the Mahars of Maharashtra. He struggled to secure for them civic rights, the right on wind, water and roads of their motherland. The year 1927 was a landmark in the history of movement of untouchables when Dr. B.R. Ambedkar organised temple entry movements, held the Mhad Satyagraha to fetch water from public chowdwar tank, burnt the Manusmriti making it responsible for the plight of the untouchables and submitted a memorandum to the Simon Commission demanding the political rights of the untouchables. Dr. B.R. Ambedkar believed that social reform was precedent to political reform,²³ and according to him, the common masses could have been made politically conscious before going to struggle for independence. He and his followers had to face strong resistance from the side of the orthodox Hindu for their social reform programmes and they had to endure a lot of criticism and humiliations. There was no change among Hindus in the direction of accepting the untouchables as their fellow religionists. The unchanging attitude of the Hindus and the outcaste existences of the untouchables led to Dr. B.R. Ambedkar to Characterise the untouchables as a separate element distinct from the Hindus and advice them to seek equal status in any other religion by renouncing Hinduism.

Of course, the freedom movement had initially given much emphasis on social reform, but it was diverted to the political aspect alone since the appointment of the Simon Commission in 1927. Dr. B.R. Ambedkar's political philosophy then developed under the impact of the prevailing social and religious condition which led him to demand "Separate electorates" for the untouchables in the Round Table Conference (1930-32). He condemned the British Government for their apathy and negligence

of the downtrodden classes during the two hundred years of their rule in India. He demanded Swaraj by which the people could redress their grievances by themselves. By swaraj he did not mean the change of Indian masters in place of Britishers,²⁴ but a democratic form of government by which all sections of the Indian population would have a proportional share in power and administration.

The social and religious struggle of the untouchables took a different turn after the Mahad Satyagraha in 1927. In every Depressed class conference held after that event, resolutions stressing the need to renounce Hinduism were passed. The Jalgoan Conference (May 29, 1929) and the Yeola Conference (October 1935) reflected this trend. Presiding over Yeola Conference, Dr. B.R. Ambedkar told ten thousand men and women assembled there that the time had come to decide and settle the question of future untouchables. He asked them to embrace a new faith that would give them equal status, a secure position and a rightful treatment. He made a bold declaration that although he was unfortunately born a Hindu untouchable, he would not die a Hindu²⁵. He was of the firm opinion that conversion would bring equal status and peaceful life to the untouchables.

Resolution regarding the renunciation of the Hindu religion were passed unanimously at the Conference. The Hindu leaders were quite perturbed to learn about the declaration. Gandhiji characterised the Yeola Resolution as an unfortunate event and wanted to urge Dr. B.R. Ambedkar to assuage his wrath and to reconsider his position. He considered this threat of conversion as a warning to the caste Hindu: if they did not wake up in time it might be too late²⁶. In this way there were frantic efforts to pressurise Dr. B.R. Ambedkar from taking recourse to conversion. But in

comparision with the plight of untouchables, the appeal did not seek to offer any consolation for the deprived masses.

The Congress leaders were well aware of the repurcussion of conversion and, therefore they undertook definite programmes to protect Hinduism from inevitability of its sizable erosion. Gandhiji, in 1934, organised Harijan movement as a program of the Congress, renamed the untouchables as Harijans (the Children of Hari, the Hindu God) set up the Harijan Sevak Sangh, visited the untouchable basis and spearheaded the movement for temple entry only to consolidate them to the side of the Congress. His movement was thus political in nature and never social or religious ²⁷.

The pressure from the Congress and the forces of the orthodox Hindus could not change the mission of Dr. B.R. Ambedkar. He addressed Mahar Ccnference on May 30-31, 1936 at Dadar and said that the untouchables had neither manpower nor financial strength to ameliorate their multifaceted problems and therefore, they could depend on mental strength, that is determination for struggle:

‘So long as you remain in Hindu religion, you will continue to feel the necessity of changing the name or your caste. Because there can be no Hindu without a caste. Hindus are recognised their varnas like, Brahmins, Kshatriyas Vaishyas and Shudras..... The aim of our movement is to achieve freedom; social, economic and religious freedom for the untouchables. And it cannot be achieved except through conversion ²⁸.

Dr. B.R. Ambedkar said that there were two ways of struggle to achieve equality. First, remaining within the Hindu fold and destroying the sanctity of caste through inter-caste dinings and inter-caste marriages. This

was not possible since the Hindus did not want it. Secondly, renouncing Hinduism by conversion. According to him, conversion was beneficial for both the communities. As a result, the untouchables would acquire equal status outside the fold of Hinduism and the caste struggle between the Hindus and the untouchables would come to an end ²⁹. Truly, by conversion all the subcastes of the untouchables could be united under the banner of one religion and this would inject a remarkable strength to ensure their progress.

In between two decades passed since his declaration of renunciation in 1935 and Dr. B.R. Ambedkar waited for reformation of Hindu society by the Hindus themselves till 1955. He remained in the nation building process as a member of the Bombay Legislative Assembly (1937-39), Labour Member of the Viceroy's executive council (1942-46), Chairman of the Drafting Committee of the Constitution (1947-49), First Law Minister (1947-51) and Member of Rajya Sabha (1952) and studied the different religions of the world in search of social equality. In the end he decided to embrace Buddhism. In 1950, Dr. B.R. Ambedkar expressed his open inclination for Buddhism because the principles of Buddhism were abiding and based on equality.

Dr. B.R. Ambedkar spread the message of Lord Buddha by writing books and delivering speeches. He addressed the people of the world from the British Broadcasting Corporation in May, 1956 and told them that he preferred Buddhism because it gave three principles in combination which no other religion did.

Buddhism teaches *prajna* (understanding as against supervision and supernaturalism), *Karuna* (Love) and *Samata* (equality). This is what man wants for a good and happy life. Neither God nor soul can save society ³⁰.

According to Dr. B.R. Ambedkar, Buddhism could bring peace and happiness to the world. He advanced lucid justifications for his renunciation of Hinduism and acceptance of Buddhism. According to him, Hinduism believed in God Buddhism has no God. In Hinduism all the superstitions and social evils are preached with the justification of having been sanctioned by God ; this practice would not be possible since there is no God. Hinduism believes in soul ; while according to Buddhism, there is no soul. Hinduism believes in Chaturvarna and the caste system ; and Buddhism has no place for the caste and Chaturvara.

Dr. B.R. Ambedkar wanted to make the Buddhist Philosophy a political philosophy to achieve equality Marxian Communism prescribes a bloody revolution for establishing equality. But Buddhist Communism prescribes bloodless revolution and offers all the three liberty, equality and fraternity. He was a political reformer and a social revolutionary who longed for the welfare and happiness of most of the people. Dr. B.R. Ambedkar, Gandhiji, Nehru and Tagore were deeply influenced. By truth, love, morality and non-violence enunciated by Lord Buddha. But it was Dr. B.R. Ambedkar who went ahead and embraced Buddhism for its own revival. He took a very appropriate decision in his time. It is now upto millions of his followers and admirers to revive Buddhism in twenty first century India. Dr. B.R. Ambedkar was a legal luminary, social activist, reformer and relentless fighter for the cause of downtrodden section. In the history of Indian Society, he will be remembered for his struggles to bring a status of equality and dignity to the untouchable classes.

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CHAPTER VI

CHAPTER – VI

SPECIAL PROVISIONS RELATING TO SCHEDULED CASTES AND SCHEDULED TRIBES IN THE CONSTITUTION

The Constitution of India is concentrated by the ideals of equality and justice both in the social and the political field. Accordingly, it abolishes any discrimination to any class of persons on the ground of religion, race or place of birth. It is in pursuance of this ideal that the constitution had abolished communal representation or reservation of seats in the legislature or in any public office on the basis of religion.

“ It would have been blunder on the part of the constitution makers , if , on logical application of the above principle “ they had omitted to make any special provision for the advancement of those who are socially and economically backward. For the democratic march of nation would be impossible if those who are handicapped are not aided at the start . The principle of democratic equality , indeed can work only if the nation as a whole is brought on the same level as far as that is practicable . Our constitution , therefore , provides certain temporary measures to help the backward sections to come up to the same level with the rest of the nation , as well as certain permanent safeguards for the protection of the cultural, linguistic and similar right of any section of the community who might be said to constitute ‘minority’ from the numerical, not communal point of view in order to prevent the democratic machine from being used as an engine of oppression by the numerical majority ¹.

In the Constitution of India special provisions have been made for Scheduled Castes and Scheduled Tribes according to which seats are reserved for those communities in educational institutions and Public Employments (Article 15(4) read with 24(2) and Article 16). In the democratic form of Government real power vests in people at large as they

elect their Government to take decision for the welfare of people and other internal and external matters of the country. It was therefore, thought essential by the framers of the Constitution to grant special protection to socially and economically depressed classes of people so as to enable them to secure due recognition amongst other people. By doing so the people of Scheduled Castes/ Scheduled Tribes have acquired substantial importance in day to day functioning of the government at centre as well as state level. It was also thought that people of Scheduled Castes and Scheduled Tribes find it difficult to contest due to their social, education and economic backwardness and therefore it is essential to give them the protection by way of reservation of seats in Parliament, Legislative Assembly and Semi-Government Institutions. With this background in view Article 330 of the Constitution was enacted to provide reservation of seats for SC and ST in the house of people except for the ST in the tribal areas of Assam, in the Lagislative Assembly State.

Article 331 of the Constitution provides for the nomination of not more than two members of the Anglo-Indian community, if President is of opinion that the community is not adequately represented in the House of People. In the first instance it was provided in Article 334 of the Constitution that the provision for reservation of seats from SC and ST as well as nomination of members of the Anglo-Indian community shall cease after 20 years from the commencement of the constitution. But keeping in view the existing conditions of these people and political activities the period of reservation initially provided was extended from time to time and it holds good even today. The relevant provisions of the Constitution with deals will the reservation of SC and ST in House of People and Legislative Assembly etc. are as follows:

(i) RESERVATION OF SEATS FOR SC AND ST IN THE HOUSE OF THE PEOPLE

The Constitution of India treats the Scheduled Castes and Scheduled Tribes in India with special favour and affords them some safeguards. The Scheduled Castes are the depressed section of the Hindus who have suffered for long under social handicaps and thus need special protection and help for the amelioration of their social, economic and political condition.

The constitution provides some reservation for the Scheduled Castes and Scheduled Tribes in the Legislature.

Article 330 of the Constitution lays down as follows:-

- 1. Seats shall be reserved in the House of the People for**
 - (a) the Scheduled Castes**
 - (b) the Scheduled Tribes except the Scheduled Tribes in the tribal areas of Assam and the Scheduled Tribes in the autonomous districts of Assam.**
- 2. The reservation for Lok Sabha seats for the Scheduled Castes and Scheduled Tribes has to be made in each state and Union territory on population basis. The number of Lok Sabha seats reserved in a state or Union territory on population basis. The number of Lok Sabha seats reserved in a state or Union territory for such castes and tribes is to be bear as nearly as possible the same proportion in the total number of seats allotted to that State or Union territory in the Lok Sabha as the**

population of the Scheduled Castes and the Scheduled Tribes in the State or Union territory bears to the total population of that State or Union territory.

In **V.V. Giri, V.D.S. Dora** ², the Supreme Court held that a Scheduled Tribe candidate can contest an election for both the seats reserved as well as open. At the same time it was also held that a non Scheduled Tribe candidate residing in a constituency for which there is a reserved seat will be unable to contest for election to that seat. It may however be noted that elections are to be held on the basis of a single electoral roll, and each voter in the reserved constituency is entitled to vote. There is no separate electorate, e.g. it is not for the Scheduled Castes and Scheduled Tribes only to elect their representatives. The system is that though a person belonging to such castes and tribes is to be elected to a voters in the constituency. This has been done with a view to discourage the sharpening of differentiation between the Scheduled Castes and Scheduled Tribes from the other people to lead to their gradual integration in the main stream of national life. In 1961, Parliament enacted legislation provided for the division of two members constituency and thus a non Scheduled Caste person will be debarred from contesting election to a reserved seat even though residing in that constituency. It further held that sec-54 of the Representation of people Act is not opposed to Article 330 of the Constitution when it is admitted that a Scheduled Tribe candidate could compete for a general seat. Also a member of

the Scheduled Castes or Scheduled Tribes is not debarred from contesting any seat other than the reserved one.

(ii) RESERVATION OF SEATS FOR SC/ST IN THE LEGISLATIVE ASSEMBLY

Article 332 of the Constitution deals with the reservation of seats for the Scheduled Castes and Scheduled Tribes in the *Legislative Assemblies of the state*. This Article lays down as follows:-

- (1) Seats shall be reserved for the Scheduled Castes and Scheduled Tribes, except the Scheduled Tribes in the tribal areas of Assam in the Legislative Assembly of every state.**
- (2) Seats shall be reserved for the Scheduled Castes or the Scheduled Tribes in the Legislative Assembly of Assam.**
- (3) The number of seats reserved for the Scheduled Castes or the Scheduled Tribes in the Legislative Assembly under clause (1) shall bear as nearly as may be, the same proportion to the total number of seats in the Assembly as the population of the total number of seats in the Assembly as the population to the Scheduled Castes in the state or of the Scheduled Tribes in the state or part of the state, as the case may be, in respect of which seats are so reserved, bears to the total population of the state.**
- (4) The number of seats reserved for an autonomous district in the Legislative Assembly of the state of Assam shall bear to the total number of seats in Assembly in**

proportion not less than the population of the district bears to the total population of the state.

- (5) The Constitution for the seats reserved for any autonomous district of Assam shall not comprise any area outside that district.**
- (6) No person who is not a member of a Scheduled Tribe of any autonomous district of the state of Assam shall be eligible for election to the Legislative Assembly of the state from any Constituency of that district.**

The total number of seats in Legislative Assemblies in state and the Union Territories in the year 1968-69 was 3,563 out of which 503 seats were reserved for SC's and 262 for ST's³.

(iii) EXTENSION OF THE TERM OF RESERVATION :

Article 334 of the Constitution deals with the reservation of seats to Scheduled Castes and Scheduled Tribes originally Article 334 provided for the reservation of seats to the Scheduled Castes and Scheduled Tribes for a period of ten years from the date of commencement of the Constitution but by the Constitution right amendment 1959 the duration was then increased for ten more years, and by an amendment of the Constitution⁴. The duration of this reservation has been extended for ten more years i.e. until Jan. 25, 1980. Forty Fifth Amendment Act, 1980, this Amendment has substituted the word "forty" for the word "thirty" in Article 334 of the Constitution. Recently by an Amendment⁵, the duration of this reservation has been extended for ten more years. Accordingly, it has submitted the word 'fifty' for the word 'forty' in Article 334 of the Constitution. It has been felt that the handicaps and disabilities

under which these people function have not yet been removed and that they need this reservation for some time more, so that their condition may be ameliorated and they may catch up with the rest of the nation. Thus we find that the reservation for Scheduled Castes and Scheduled Tribes candidates which was originally to cease after ten years from 26th. January, 1950 will now cease after 50 years. Thus this Article has since been amended four times, extending the said period of 10 years on each occasion. This provision is now to expire in January, 2000.

(iv) CLAIMS OF SCHEDULED CASTES TO SERVICES AND POSTS:

The secularism, egalitarianism integrity and unity as their basis objects of the constitutional philosophy could not permit horizon division of the country into backward and non backward for the sake of job reservations. Article 16(4) empowers the state to make 'any provision for the reservation of appointments or posts in favour of any backward class of citizens which in the opinion of the state, is not adequately represented in Services under the state.

The Government of India's policy has been to make reservation for candidates belonging to Scheduled Castes and Scheduled Tribes for posts/ services under the Central Government in accordance with the provisions of Article 16(4) and Article 335 of the Constitution.

Article 335 of the constitution lay down as follows:-

"The claims of the members of the Scheduled Castes and Scheduled Tribes shall taken into consideration,

consistently with the maintenance of efficiency of administration, in making appointments to services and posts in connection with the affairs of the Union or of the state”.

Various instructions are issued from time to time, in implementation of this policy indicating the reservation for candidates of SC/ST, in all vacancies in posts /grades under the Central Government filled by direct recruitment, and subject to certain conditions, in vacancies filled also by promotion both on the basis of seniority-cum-fitness and selection. These orders have generally referred to the posts/grades under the Central Government as those belonging to Class I, II, III and IV.

The Government of India's intention has always been that the scheme of reservation for SC/ST should embrace all the posts and grades under the Central Government irrespective of whether they have been classified as Class I, II, III and IV or not, and never to exclude posts in the industrial establishments whether classified or not from the purview of the scheme of reservations. The incumbents of the posts in the industrial establishments whether classified or not, are also governed usually by the normal services rules and regulations of Central Government on the same lines as other employees holding posts in Classes I, II, III and IV. The various instructions issued by the Department of Personnel and Administrative Reform in regard to reservations for SC/ST therefore must apply *mutandis* to such posts/grades also.

(v) **SPECIAL OFFICERS FOR SCHEDULED CASTES AND SCHEDULED TRIBES FOR THE ENFORCEMENT OF SAFEGUARDS:**

Article 338 lays down that there shall be a special officer for the Scheduled Castes and Scheduled Tribes to be appointed by the President. It further lays down it shall be the duty of the special officer to investigate all matters relating to safeguards provided for the Scheduled Castes and Scheduled Tribes under this constitution and report to the President upon the working of the safeguards at such interval as the President may direct, and the President shall cause all such reports to be laid before each House of Parliament. It further adds that references to such other backward classes as the President may on receipt of the report of a commission appointed under clause (1) of Article 340, by order specify and also to the Anglo-Indian community.

Article 338 makes provision for appointment of special officer. In accordance with Article 338 the post of special officer was for the very first time filled in U.P. on 18th November, 1950 and designated as commissioner for Scheduled Castes and Scheduled Tribes. The first commissioner was Sri L.M. Shrikant who remained in the office till the end of December, 1961. The first Report of the Commissioner covered the calendar year 1951. The Commissioner in his First Report stated:

'It has since been decided by President that I shall submit my report once a year for each calendar year and that the First Report should be for the calendar year ending December, 1958, '61.

(vi) APPOINTMENT AND FUNCTIONS OF COMMISSIONER FOR SCHEDULED CASTES AND SCHEDULED TRIBES:

Article 338 of the Constitution provides for a special officer for the SC and ST to be appointed by the President, whose duty is to investigate all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under the Constitution and to report to the President upon the working of those safeguards at such intervals as the President may direct, and present all such reports to be laid before each House of Parliament.

The original Article 338 of the Constitution read as follows:

1. **“There shall be a special officer for the Scheduled Castes and Scheduled Tribes to be appointed by the President.**
2. **It shall be the duty of the special officer to investigate all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under this Constitution and report to the President upon the working of those safeguards at such intervals as the President may direct, and the President shall cause all such reports to be laid before each House of the Parliament.**
3. **In this Article references to the Scheduled Castes and Scheduled Tribes shall be construed as including references to such other backward classes as the President may on receipt of the report of a commission under clause (1) of Article 340 by order specify and also to the Anglo-Indian community.**

Under Article 339 the President is empowered to appoint at any time, and is under an obligation to appoint at the expiry of ten years from the commencement of the constitution, a commission to report on the administration of the Scheduled Areas and welfare of the Scheduled Tribes in the states. Article 339(2) provides that the executive power of the Union extends to give directions to a state as to the drawing up and execution of schemes specified in the direction as essential for the welfare of the SC/ST in the state. Article 340 provides for the appointment of a commission to investigate into the conditions of backward classes. "The Commission is to report on the facts found by them to make such recommendations as they think proper and Article 340(3) provides:

"The President shall call a copy of the report so presented together with a memorandum explaining the action taken thereon to be laid before each House of Parliament".

The Liason Officers who have been nominated in the Ministries etc., for work relating to representation of SC and ST should ensure the extension of necessary assistance to the Commissioner for SC and ST in the investigation of complaints received by the latter in regard to service matters.

(vii) COMMISSIONER FOR SC & ST:

The special officer mentioned in Article 338(1) was designated as the Commissioner for Scheduled Castes and Scheduled Tribes by the first President, Dr. Rajendra Prasad, Sri L.M. Shrikant appointed as the first Commissioner on 18-11-1950 continued till the end of 1961.

The organization of the Commissioner for Scheduled Castes and Scheduled Tribes was weakened by the decision of the Government of India in June, 1967 to take away all the 17 field officers which functioned as “eyes and ears” of the Commissioner and regrouping them into five Zonal Offices of Backward Classes welfare and putting them under the Central of a newly created post of Director General, Backward Classes welfare, under the Union Department of Social welfare. This step was detrimental to the interests of the Scheduled Castes and Scheduled Tribes as the Commissioner was not left with any independent agency to collect reliable information and assessment of the problems of these disadvantaged groups and the developmental programmes undertaken for them. In its first Report (1969) the Parliamentary Committee on the welfare of Scheduled Castes and Scheduled Tribes deplored this action of the Government and wanted the hands of the Commissioner strengthened. However, the Government did not restore the field organization to the Commissioner for SC & ST whose effectiveness was thus undermined.

(viii) COMMISSION FOR SC & ST (NON-STATUTORY):

There was a persistent demand by SC & ST representatives particularly the Members of Parliament, that the special officer under Article 338 should be replaced by an effective multi-member commission with increased functions and powers. The Ministry of Home Affairs by Resolution No. 13013/9/77-SCT(I) dated 21.7.78 decided to set up a commission for Scheduled Castes and Scheduled Tribes. The first Commission was constituted in August, 1978 with Shri Bhola Paswan Shastri as Chairman. However this step was taken without abolishing the office of the special officer for SC &

ST. On 3.8.1978 the Government introduced the Constitution (six Amendment) Bill, 1978 in the Lok Sabha to amend Article 338 along with Article 350(B). This Bill could not be taken up in 1978 winter session of the Parliament. It was brought up again in the Lok Sabha as the Constitution (Forty First Amendment) Bill, 1979, but could not secure the requisite majority. However, in their keenness to get the Bill passed the Government advanced the monsoon session by a week. But before any other business could be taken up a no-confidence motion was moved leading to fall of the Government. The Commission set up by an executive resolution, however continued to function. It was an unsatisfactory situation with the statutory office of the special officer for SC & ST and the non statutory commission for SC and ST co-existing charged with the same functions. After then Commissioner for SC & ST demitted his office in November, 1981 the post was not filled up for more than four years.

(ix) NATIONAL COMMISSION FOR SC & ST (NON-STATUTORY):

On 1.9.1987 the Government decided to demarcate the functions of the special officer for SC & ST and the commission for SC and ST. It was decided that only the commissioner for SC & ST would be submitting the (Annual) Reports to the President and the Parliament and the Commission which was re-christened as the National Commission for SC & ST would conduct studies. The Ministry of welfare Notification No. BC-13015/12/86-SCD. VI dated 1.9.81 laying down the functions of the National Commission for SC & ST the Ist. Chairman of the Commission. Shri Bhola

Paswan Shastri, was succeeded by Shri K. Raja Mallu (17-8-81 to 24-3-83).

(x) NATIONAL COMMISSION FOR SC & ST (STATUTORY):

The Constitution (Sixty eight Amendment) Bill, was passed unanimously by the Lok Sabha on 30.5.1990 and the Rajya Sabha on 31.5.1990. It received the President's assent on 7.6.1990 and was notified as the constitution (Sixty fifth Amendment) Act, 1990, in the official Gazette on 8.6.1990.

The Chairperson, the Vice-Chairperson and the Member of the new Constitutional National Commission for SC & ST (herein after referred to as the Commission) were to be appointed by the President of India in accordance with the conditions of service and tenure of office as the President might by rule determine. These rules were notified on 3.11.1990. The Commission was, however, reconstituted in accordance with these rules only on 12.3.1992.

(xi) FUNCTIONS OF THE COMMISSION:

The functions of the Commission have been laid down in clauses (5), (8), (9) and (10) of the amended Article 338 of the Constitution. These functions are briefly discussed here:

(1) INVESTIGATION INTO AND MONITORING OF SAFEGUARDS PROVIDED UNDER THE CONSTITUTION

The Commission is required to investigate and monitor all matter relating to the safeguard provided for SC & ST under the constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards.

The important constitutional safeguards for SC and ST are mentioned in Article 46, 17, 23, 24, and 25(2)(b).

(a) DIRECTIVE PRINCIPLES OF STATE POLICY:

Article 46 is a Comprehensive Article comprising both the developmental and regulatory aspects. It reads as follows:

“The state shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes, and Shall protect them from social injustice and all Forms of exploitation”.

(b) SOCIAL SAFEGUARDS:

According to Article 17 “Untouchability” is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of ‘untouchability’ shall be an offence punishable in accordance with the law.

There are two important legislation relating to this Article viz., the protection of Civil Rights Act, 1955, and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

Article 23 prohibits traffic in human beings and beggar and other similar form of forced labour and provides that any contravention of this provision shall be an offence punishable in accordance with law. It does not specifically mention SC & ST but since the majority of bonded labour belong to SC and ST, this article has a special significance for SC & ST. In pursuance of this article there is the Bonded Labour System (Abolition) Act,

1976, and there is a Centrally Sponsored Scheme for identification, Liberation and rehabilitation of bonded labour.

Article 24 provides that no child below the age of 14 Years shall employed to work in any factory or mine or engaged in any other hazardous employment. There are Central and State Laws to prevent child labour. This Article too is significant for SC & ST as a substantial portion, if not the majority, of child labour engaged in hazardous employment belong to SC & ST.

Article 25(2)(b) provides that Hindu religious institutions of a public character shall be thrown open to all sections and classes of Hindus. This provision is relevant as some sects of Hindus used to claim that only members of the concerned sects had a right to enter their temples. This was only a subterfuge to prevent entry of SC persons in such temples. For the purpose of this provision the term Hindu includes Sikh, Jaina and Buddhist.

(c) ECONOMIC SAFEGUARDS:

The provisions of Article 46, 23, and 24 mentioned also form part of the economic safeguards. The specific safeguards for the Scheduled Tribes are mentioned below:

According to Article 244(1), the provision of the fifth Schedule shall apply to the administration and Central of the Scheduled Area and Scheduled Tribes in any state other than the state of Assam, Meghalaya, Mizoram and Tripura.

According to 244(2) the provision of the Sixth Schedule shall apply to the administration of the tribal Areas in the states of Assam, Meghalaya, Mizoram and Tripura.

Article 275(1) provides that

“there shall be paid out of the consolidated Fund of India as grants-in-aid of the revenues of a state such capital and recurring sums as may be necessary to enable that state to meet the costs of such schemes of development as may be undertaken by the state with the approval of the Government of India for the purpose of promoting the welfare of the Scheduled Tribes in that state or raising the level of administration of the Scheduled Areas therein to that of the administration of the rest of the areas of that state.

A similar provision exist in this article for paying such special grants to the states covered under the Sixth Schedule out of the Consolidated Fund of India.

Fifth Schedule contains provisions regarding the administration and control of the Scheduled Areas and Scheduled Tribes. There are eight states having Scheduled Areas, viz., Andhra Pradesh, Bihar, Gujarat, Himachal Pradesh, Madhya Pradesh, Maharashtra, Orissa and Rajasthan. The Governors of these states have the power to make regulations for the peace and good government of any Schedule Area, particularly for the following purposes:

- (i) **to prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such area**
- (ii) **to regulate the allotment of land to members of the Scheduled Tribes in such area**

- (iii) **to regulate the carrying on of business as money-lender by persons who lend money to members of the Scheduled Tribes in such area.**

Sixth Schedule contains provisions relating to the administration of Tribal Areas in the state of Assam, Meghalaya, Mizoram and Tripura. There are autonomous District Councils and Autonomous Regional Councils not only administer the various Departments and developmental programmes but they also have powers to make laws on a variety of subjects, eg., land, forest, shifting cultivation, village or town administration including village or town police and public health and sanitation inheritance of property marriage and divorce and social customs.

(d) EDUCATIONAL AND CULTURAL SAFEGUARDS:

Article 15(4) empowers the state to make any provision for the advancement of any socially and educationally backward classes of citizens or for SC & ST. This provision was added through the constitution (first Amendment) Act, 1951, which amended several articles. This provision has enabled the state to reserve seats for SC & ST in educational institutions including technical, engineering and medical colleges. In this as well as in Article 16(4) the term 'backward classes' is used as a generic term and comprises various categories of backward classes, viz., Scheduled Castes, Scheduled Tribes, Other Backward Classes, Denotified (Vimukta Jatiyan) and Nomadic /Semi-nomadic communities. Article 29(1) provides that **"any section of the citizen residing in the territory of India or any part there of or having a distinct language, script or culture of its own shall have the right to conserve the same"**. This article has special significance for all the Scheduled Tribes.

Article 350 A provides that **“it shall be the endeavour of every state and of every local authority within the state to provide adequate facilities for instructions in the mother tongue at the primary stage of education to children belonging to linguistic minority groups, and the President may issue such directions to any state as he considers necessary or proper for securing the provision of such facilities”**. Most of the tribal communities have their own languages or dialects which usually belong to different family of languages than the one to which the state’s official language belongs various expert commissions and committees have recommended that instruction should be imparted to tribal children in their mother tongue in primary schools, at least in classes I and II.

(e) POLITICAL SAFEGUARDS:

Article 164(1) provides that in the states of Bihar, Madhya Pradesh and Orissa there shall be a Minister in charge of tribal welfare who may in addition be in charge of the welfare of the Scheduled Castes and Backward Classes or any other work.

Article 330 provides for reservation of seats for SC & ST in the Lok Sabha and Article 332 provides for reservation of seats for SC & ST in the Vidhan Sabha (Legislative Assemblies).

Article 332 originally laid down that that the provision relating to the reservation of seats for SC and ST in the Lok Sabha and State Vidhan Sabhas (and the representation of the Anglo-Indian community in the Lok Sabha and the State Vidhan Sabhas by nomination) would cease to have effect on the expiration of a period

of ten years from the commencement of the constitution. This article has since been amended four times, extending the said period by ten years on each occasion. This provision is now to expire in January, 2000.

Article 371 A	Contains special provisions with respect to Nagaland
Article 371 B	Contains special provisions with respect to Assam.
Article 371 C	Contains special provisions with respect to Manipur.
Article 371 D	Contains special provisions with respect to Sikkim.

(f) SERVICES SAFEGUARDS:

Article 16(4) empowers the state to make “any provision for the reservation of appointments in favour of any backward class of citizens which, in the opinion of the state, is not adequately represented in the services under the state”.

Article 320(4) provides that consultation with the UPSC or any state Public Service Commission shall not be required as respects the manner in which any provision under Article 16(4) may be made or the manner in which effect may be given to the provisions of Article 335.

2. LAWS FOR SCHEDULED CASTES AND SCHEDULED TRIBES:

There are number of laws, both Central and State, which provides safeguards for SC and ST. Some of these emanate from the various constitutional provisions. Such laws are as follows:

- (i) **The protection of Civil Rights Act, 1955**
- (ii) **The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.**
- (iii) **The Bonded Labour System (Abolition) Act, 1976.**
- (iv) **The Child Labour (Prohibition and Regulation) Act, 1986.**
- (v) **Acts and Regulations in force in different states to prevent alienation of Land belonging to SC and ST. In some states such provision exists in the Land Revenue Code.**
- (vi) **Acts in different states for restoration of alienated Land to SC & ST.**
- (vii) **The Forest Conservation Act, 1980.**

The Commission proposes to compile list of all such laws, both Central and State, which provides safeguards to SC and ST or protect their interests.

3. ORDER FOR SCHEDULED CASTES AND SCHEDULED TRIBES:

Similarly the commission proposes to undertake an exercise of listing such executive orders issued by the Government of India or the State Governments which are not covered by the Constitutional safeguards or the laws referred to above but which provide safeguards to SC and ST or protect their interests. For instance, in pursuance of the constitutional provisions of services safeguards. The Government of India have issued a large number of orders for reservation of seats for SC & ST in services and posts both in recruitment and promotion. Beside they have issued many orders covering various aspects of SC &

ST communities and relating to various sectors. All these orders will have to be compiled in respect of the Union and the States.

4. INQUIRY INTO SPECIFIC COMPLAINTS:

The Commission is required to inquire into specific complaints with respect to the deprivation of rights and safeguards of SC and ST. In order to enable the commission to perform this function with manageable limits the commission would like to appeal to members of SC & ST that before submitting any specific complaint to the commission for redress of their grievances, they should clearly state if how there has been a violation of their rights and safeguards. A large number of representations are regularly received from SC & ST employees working in Government Departments, public sector undertakings and autonomous bodies. The commission would like them to know that it will be a position to inquire into their service grievances only if there has been a violation of any provision of the Acts governing reservation in services and posts for SC & ST (the state Governments of Manipur, Orissa and West Bengal have passed such legislations) or in the case of Government of India, of the orders contained in the brochures relating to reservation matters issued by the Ministry of Personal, the BPE/ administrative Ministries in relation to the Public Sector undertakings under them, the Ministry of Railways, the Banking Division etc. The Commission would not like to interfere in vigilance cases, disciplinary cases. criminal cases before a court of law, merit of adverse remarks in annual confidential reports and the like. In addition, the following guidelines are laid down for submission of specific complaints.

- (i) **The complaint should be directly addressed to the Chairman, National Commission for SC & ST , or the heads of its field offices. No action will be taken on representatives which are addressed to other authorities with only an endorsement to the commission.**
- (ii) **The Complaint should disclose his full identity and give his full address. No action will be taken on an unsigned complaint.**
- (iii) **Complaints should be legibly written and, where necessary, supported by authenticated documents.**
- (iv) **No action will be taken on matters which are sub judice.**
- (v) **Cases in which a court has already given its final verdict shall not be taken up a fresh by the commission.**

5. SOCIO ECONOMIC DEVELOPMENT OF SC & ST:

The Commission is required to participate in and advise on the planning process of socio-economic development of SC & ST and to evaluate the progress of their development under the Union and any state. The role of the Commission in these areas will be at various levels, i.e., the Planning Commission, the Central Ministries and the State Governments. The Commission and its officers both at the Headquarters office and in the field officers would be involved with the formulation of policies and developmental programmes for SC & ST including the special component plan for the Scheduled Castes and the Tribes Sub-plan. The Commission would evolve the necessary procedures for such participation and evaluation work.

6. ANNUAL REPORT UPON THE WORKING OF THE SAFEGUARDS FOR SCHEDULED CASTES AND SCHEDULED TRIBES:

The Commission is required to present to the President, annually and at such other times as the commission may deem fit, reports upon the working of the safeguards provided for SC & ST under the constitution, various laws and orders. These reports shall contain recommendations as to the measures that should be taken by the Union or any state for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of SC & ST. The President shall cause all such reports to be laid before the each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any of such recommendations.

Where any such report, or any part thereof, relates to any matter with which any State Government is concerned, a copy of such report shall be forwarded to the Governor of the State who shall cause it to be laid before the Legislature of the state along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the state and the reasons for the non-acceptance, if any, of any of such recommendations.

7. POWERS OF THE COMMISSION TO ACT AS A CIVIL COURT:

While investigating any matter to in sub-Clause (a) or inquiring into any complaint referred to in sub-Clause (b) of clause (5), the Commission shall have the powers of a Civil Court trying a suit and in particular in respect of the following matters:

- a) **summoning and enforcing the attendance of any person from any persons from any part of India and examining him on oath.**
- b) **requiring the discovery and production of any document,**
- c) **receiving evidence on affidavits,**
- d) **requisitioning any public record or copy there of from any court or office,**
- e) **issuing Commission for the examination of witnesses and documents,**
- f) **any other matter which the President may, by rule, determine.**

The Commission does not have any power to give verdict or direction. It can only give its findings and recommendations.

8. CONSULTIVE ROLE OF THE COMMISSION:

The Constitution has made it mandatory for the Union and every state Government to consult the commission on all major policy matters affecting SC & ST. This is a very important function of the Commission which has to keep track of all the major policy decisions taken by the Government of India or any State Government. These decisions could be legislative or executive. Obviously it is not possible for the commission alone to find out what all policy decisions have been or are being taken by the Government. Therefore, the commission would welcome information about this matter from all quarters so that the interests of SC & ST are not affected adversely by default.

9. INQUIRY INTO CASES OF ATROCITIES ON SCHEDULED CASTES AND SCHEDULED TRIBES:

Whenever information is received by the commission about any incident of atrocity on a person or persons belonging to SC & ST, the commission would inquire into it to determine the circumstances that led to the occurrence of the incident and to see if the law and order and other state machinery have taken proper action including distribution of relief to the affected persons or their families. The Commission would lay down the detailed procedure for conducting such inquiries at different levels. Such inquiries may be conducted directly by the members of the Commission or through the investigating teams from the Headquarters office of the Commission or the field officers of the Commission. All the concerned authorities at the centre or in the state would be expected to render assistance to the Commission in such inquiries.

The office of the commission has its Head of the Department which is Secretary to the Commission, an officer of rank of Secretary to the Government of India. The Government proposes to have a number of wings to perform the various functions laid down in the Constitution. It has submitted its proposals for sanction of additional Staff to the Government.

REFERENCES:

1. Basu, D.D., Introduction to the Constitution of India (ED: 6th.) at p.327.
2. AIR 1959, S.C. 1318
3. Report of the Commission for Scheduled Castes and Scheduled Tribes 1968-69 at p. 73.

4. The Constitution (23rd.) Amendment Act 1969.
5. The Constitution (Sixty Second) Amendment Act 1989.
6. Committee on the welfare of Scheduled Castes and Scheduled Tribes first Report No., 1962, at p.2.

CHAPTER VII

CHAPTER VII

DATA ANALYSIS

(i) SELECTION OF RESPONDENTS FROM THE DISTRICTS OF U.P. (ALIGARH, AGRA & RAMPUR) :

A sequential list of respondents in the five rural and urban areas of the three districts was prepared and the names of the required respondents were arranged in the numerical order. A random table was used to select the respondents from each district. The main features of the study and the method of completing the questionnaire was explained to them. An interview diary was also maintained. This was used during group discussions with different respondents. This method proved to be more useful and meaningful wherever the questionnaire method did not help in getting a clearer and broader prospective of the problem.

(ii) PROCESSING AND ANALYSIS OF THE DATA:

The data obtained through the questionnaires were transferred to a mastersheet. Before that was done the questionnaires were carefully looked into and edited. In a few cases there was need to get clarifications from the respondents. Then the data was organised and manually tabulated. Simple statistical tool like percentage was used. Besides quantification of the data, qualitative descriptive method was also kept in mind. Group discussions and personal interviews were analysed qualitatively.

(iii) RESPONSES TO THE QUESTIONNAIRE:

It is to mention here that the researcher has constructed a questionnaire comprising sixty five questions with a view to assess the impact of reservation policy on the political, social and economic life of the Scheduled Castes (herein called as the beneficiaries of the three districts of UP). Out of 65 questions same questions were devoted to assess the impact

of reservation policy on the political life of the beneficiaries and few questions were constructed to assess the impact on their social life and few questions were exclusively related to their economic life.

The scrutiny of responses concerning questions dealing with the political life of the beneficiaries reveals that the beneficiaries had always shown a keen interest in sharing political powers at different levels of the governmental machinery. This is evident from the fact that 218 beneficiaries out of 300 (72.67%) have stated in their responses that they are the active member of the political organisations in their villages area. Moreover 31 out of 300 (10.33%) beneficiaries have admitted that they are the regular subscribers of the fee which they pay to retain their membership in the party organisations. When asked whether they had ever cast their votes in Panchayats, Vidhan Sabha (Legislative Assembly) and Lok Sabha (House of the people) elections 93.67% of the total respondents have stated that they were always quite vigilant to cast their votes whenever there was any election at village, state and national level 60 out of 300 respondents (20%) mentioned in their responses that they cast their vote on the consideration of the caste of the candidate, 51.0 percent, however admitted that they caste their vote to the party and 29.0 percent respondents have expressed their view that they cast their vote purely on the merit of the contesting candidate. When asked whether their votes were ever purchased by political parties on the strength of their money or muscle power 45.67 percent (137/300) respondents have stated that they had always exercised their voting right freely without any pressure from any political organisations, 54.33 percent respondents have however admitted that their votes were purchased by politicians on the basis of money power. When asked whether they had ever endeavoured to contest election against non-reserved seats, 88.67 percent respondents admit they had no such

courage. While asking whether they had ever won any election against the open seat 11.33 percent respondents have stated that they could win these seats in panchayat elections only. When asked whether they had ever participated in processions rallies etc. of the political party 76.0 percent have stated that they had participated in the meetings organised by the political parties while 38.0 percent have admitted they had participated in the processions only organised by the political parties. When asked whether they had worked for any political party in the election 81.67 percent have admitted that they had worked for the political party and 63.0 percent admitted that they were the active worker of the political party. When asked whether any family member of the respondent is an active worker of the political party, 79.67 percent have stated that they have members in their family who worked actively for the political parties. When asked that in what manner they worked for any political party in an election, 27.0 percent stated that they had distributed pomplets, 20.67 percent stated that they shouted slogans, 11.0 percent have participated in processions, 13.0 percent did canvassing for the political parties and 18.33 have stated that they were non-active.

So far as the role of Panchayats to promote the interests of the beneficiaries is concerned 104 out of 300 (34.67 percent) feel that panchayats are playing a significant role in promoting their interests in the light of constitutional commitment. 65.33 percent respondents however, do not agree with the majority of the view point. When asked which particular party is the well-wisher of the Scheduled Castes. However 21.0 percent respondents, have stated that it is the Congress party which is devoted to their welfare 43.67 percent and 32.67 percent respondents have mentioned that Bhartiya Janata Party and Bahujan Samaj Party are the real well-

wishers. But 8 out of 300 (2.67 percent) respondents feel that none of the political parties are their well-wishers.

In order to obtain their view point with regard to reservation of seats in the legislature, 226 out of 300 respondents (75.33 percent) have strongly stressed that the reservation of seats in the legislature must continue. Not only this 24.67 percent have categorically asserted that reservation of seats to the legislative bodies must continue for ever.

When asked whether atrocities are being caused on them by upper castes 72.33 percent respondents have admitted in their responses that higher castes had caused atrocities on them and they were ever threatened to cast their votes in their favour. There are only 27.67 percent respondents, who have admitted that no atrocities are administered on them. So far as they registration of atrocity cases are concerned 89.0 percent (267 out of 300) have fearlessly stated that police people are quite harsh and generally refuse to help them in registering their cases against the people of higher strata of the society. Only 11.0 percent respondents have stated that police staff is always helpful in registering their cases. When asked whether they had ever experienced ill treatment from the upper castes of their locality 96.67 percent responded that they had experienced ill treatment from upper castes.

So far as the degree of awareness about the provisions of welfare legislations among the Scheduled Castes is concerned, 67.67 percent respondents admit that they are fully aware of constitutional as well as other legislative measures which the government has enacted from time to time for their safeguard. However 32.33 percent have mentioned that they have no knowledge about their fundamental rights available to them under the constitution. In the similar spirit 99.33 percent respondents claim that

they have knowledge about the fact that untouchability is an offence. Only 0.67 percent respondents have admitted that they are not aware of the provisions when asked that whether they are aware that certain posts are reserved for S/C in public sector enterprises 50.33 percent have admitted that they are aware of such posts while 49.67 percent have admitted that they are unaware of such posts. While assessing the impact of reservation policy on the social life on the Scheduled Castes, the responses of the respondents reveal that the instinct of equality in the light of constitutional philosophy has not gained any strength. This is borne out of the fact that 90.67 percent (272 out of 300) respondents admit that the upper castes do not allow them to share water from the same source. There are only 28 out of 300 (9.33 percent) who have stated that they are allowed to share water from the same source. When asked whether the upper castes allow them to enter into the temples. However 90.67 percent have not agreed. They have stated that they upper castes do not permit them to enter into the temples. Further 82.0 percent respondents have stated in their responses that upper castes people do not allow them to share meal with them on occasions like marriages, ceremonies and other occasions of such type.

When asked whether they were humiliated by the people of upper castes of their villages 86.0 percent have admitted that humiliation is caused by the upper castes against them and 14.0 percent have denied this charge. They have even gone to the extent of admitting that they had never registered any case against the members of higher castes on the ground of humiliation. 76.33 percent respondents have stated that they had not registered any case against the upper castes on grounds of their humiliation. Majority of the respondents said that they do not remember any incident in their area because they feel if they will speak the truth a tension may arise between the people of upper castes and lower castes. However they

admitted that they have unions to fight against the people of higher castes whenever there is any kind of atrocity caused on the people of the lower castes.

With regard to the availability of medical/health facilities 17.67 percent respondents have admitted that they have these facilities in their villages. However, 82.33 percent respondents have stated that they do not have these facilities in their villages. While asking whether their villages are connected by road facilities 65 out of 300 (21.67 percent) respondents have stated their villages are connected by road facilities, while 59.0 percent respondents have stated their villages are not connected by road facilities.

So far as the responses with regard to educational facilities for them are concerned, 21.67 percent respondents have admitted that they have educational institution in their villages or adjoining to their villages. But 78.33 percent respondents still deny these facilities. It is shocking to note that 81.33 percent have admitted that their children are not getting help in the form of fees, copies, attendance, scholarship and uniform etc. from the government and hence they have stopped their children from going to schools because of financial crisis. 18.67 percent respondents have admitted that their children are getting help in the form of free books, copies, attendance scholarships, uniforms, merit scholarship etc. When asked whether their children get the benefit of reservation in admission to any educational institution. 63.0 percent respondents have stated that their children are not getting any benefit of reservation in schools while 37.0 percent have admitted that their children got admission in schools/colleges because of reservation. 80.67 percent respondents have stated that they had not recovered any monetary help under various schemes from the government and also 74.67 percent respondents have admitted that they had

not taken any loans from the banks. When asked whether reservation facilities provided in the educational institutions are adequate in terms of number of Scheduled Caste students seeking admission. 79.0 percent responded that they are not adequate while 8.0 percent and 13.0 percent responded that they do not know and cannot say anything.

When asked whether there is any female working member in their family, 73.33 respondents stated that they do not prefer any lady member of their family to work in any office. While 26.67 percent respondents have stated that they had female working members in their family. When asked whether she is facing any sexual harassment in the office, 91.33 percent respondents with fear replied in negative, while 9.67 percent respondents stated without fear that there was sexual harassment with the female working member of his/her family.

When asked whether the reservation policy had enabled them or their children to get government jobs, 85.33 percent respondent that they were unable to get government jobs inspite of reservation policy. About 40.33 percent respondents were unaware of the reservation of jobs in government and public undertakings. This was mainly due to the fact that due to illiteracy they were unaware of the governmental programs and no effort was made to communicate such programs to the common man. When asked whether the reservation policy enabled the scheduled castes to obtain jobs to a large extent 86.33 percent of respondents replied in negative only 13.67 percent of respondents affirmed that they had obtain job due to reservation policy. When asked whether reservation policy only helped in getting government jobs and not private jobs 50.33 percent respondents denied that the reservation policy has not helped them in either of government or private jobs. Only 49.67 percent respondent replied that they were able to get only government jobs by reservation policy and no private

job was given to them. When asked whether the reservation policy has enabled the scheduled castes to obtain jobs 79.0 percent of respondents stated that it had not helped too much in obtaining jobs which 6.0 percent of respondents replied that it had helped us to a large extent, 4.0 percent replied that it had only helped in getting government jobs and not in private jobs, 11.0 percent of respondents replied nothing about the jobs. When asked whether they in favour of introducing reservation policy in private concern, 75.67 of respondents stated that it will be helpful; while 17.33 respondents stated that it will be of no use and 5.0 percent of respondents were not at all in favour of introducing reservation policy in private concern. Thus the respondents have admitted that the benefits of the reservation policy in jobs are being monopolized by a small section of the beneficiaries. The respondents have also admitted that their way of life in village have undergone a slight change because the beneficiaries who are benefited are very few. As a result of this there is no change in the evil practices and customs. These customs are still prevailing in the society and due to this they are unable to form a dynamic society.

The responses received from the respondents reveal that the average size of 15-20 members 95 out of 300 (50.33 percent) respondents have stated that the number of members of their family is between 15-20. However, 31.0 percent beneficiaries have mentioned that the size of their families is between 10-15, 14.0 percent have stated that the size of their family is between 5-10 while 4.0 percent stated the size as below 5 members. So far as the source of their livelihood is concerned, 29.33 percent respondents have mentioned agriculture/horticulture as the main source of livelihood 15.33 percent respondents have stated that service is their principal source of livelihood while 11.67 percent respondents have stated that Business is their principal source of livelihood. Only 43.67

percent beneficiaries have mentioned that they do not earn their livelihood from *agriculture* but they are to carry out miscellaneous activities for the survival of their families.

So far as the size of their holdings is concerned 27.33 percent respondents have stated that the size of their holding is between 0-5 bighas. 35.0 percent respondents have stated that their holdings is between 5-10 bighas. There are only 11.0 percent beneficiaries who have stated that the size of their holdings is above 10 bighas and 43.67 percent of respondents have stated that they had no holdings. While asking about the annual income which they get out of their holdings, 45.33 percent respondents have mentioned that their annual income is between Rs. 1000-5000. 25.0 percent respondents have stated that their annual income from their holdings falls between Rs. 5000-10000. 13.67 percent respondents have mentioned their annual income from their holdings below Rs. 1000. There are only 15.33 percent respondents who have stated that the income from the holding is above Rs. 10000.

member

While responding to the question whether any of their family_λ is in government/semi-government/private jobs. 146 out of 300 respondents (48.67 percent) respondents have stated that there is no member from their families in any government/semi-government/private jobs, 12.33 percent beneficiaries have mentioned that they have more than 5 members in the government jobs and 39.0 percent respondents mentioned that they have less than 5 members in the government jobs. Thus the careful scrutiny of these responses reveal that 48.0 percent respondents have still remained deprived of their representation in jobs. Only $(12.33 + 39.0 = 51.33)$ percent) respondents have reaped the benefit of reservation in matters of public employment. It is evident from the responses that the benefits of reservation in matters of public employment has been eaten up by 51.33

percent beneficiaries who have below five or more than five members from their families in the public employment. When asked about the nature of the government job of the respondents 154 members are in government job. It is further stated 43 out of 154 respondents (25.97 percent) are holding class III status, 20.79 percent are holding class IV status and 25.97 percent and 25.32 percent respondents belong to class I and II category respectively. While responding to the effect of behaviour of colleagues in the office 24.0 percent responded that the behaviour of their colleagues effects them to some extent while 64.33 percents responded that the behaviour of their colleagues effects them to a large extent and 11.67 percent responded that the behaviour of the colleagues does not effect them. When asked about the attitude of boss on the respondents 177 out of 300 respondents (59.0 percent) have stated they do not pay extra attention to us. 31.33 percent respondents stated that they are not at all helpful and they often humiliate them in front of every one. While 31.33 percent respondents have stated that they are not at all helpful and they make us do the degrading tasks. When asked whether there is any discrimination on the caste basis at promotion level. The majority of the respondents (88.33 percent) stated that there is discrimination on the caste basis at promotion level.

When asked whether the governmental programmes are destroying their self respect, 98.33 percent respondent responded that these programmes are not destroying their self respect because these programmes are only introduced for their upliftment. When asked whether the benefits of reservation policy being reaped by all members of scheduled castes 92.67 percent respondents stated that the benefits of reservation policy have not reaped by them. When asked whether the task they perform like scavanging and sweeping etc. are degrading, majority of the respondents

(83 percent) were of the views that these very tasks are degrading while 17.0 percent respondents have responded that these tasks are not degrading because their forefathers were also doing the same job. When asked whether untouchability offence Act 1955 (Protector of Civil Rights Acts, 1978) has been properly implied the majority of respondents (91.0 percent) were of the view that the Act is not being properly implement and they are still being treated as untouchables and very often humiliated by high castes because of untouchability. When asked whether separate colonies, schools, drinking water facilities etc. provided by the government are promoting their segregation instead of promoting their integration, Majority of the respondents (97.0 percent) were of the view that it is not promoting any segregation these very facilities are for their benefits only. When asked whether the governmental programmes for the upliftment of scheduled castes are beneficial or not, 66.67 percent of the respondents were of the view that they are very beneficial. 4.0 percent of respondents stated that they are fairly beneficial while 29.33 percent of respondents have stated that the benefits have not reached the deserving and for whom it is meant. When asked whether the governmental programmes are properly administered 69.67 percent of the respondents were of the view that these programs are not administered satisfactory, while 9.67 percent respondents have admitted that they are fairly administered. 20.67 percent with fear stated that they cannot say anything as authorities may view it bad and would trouble them.

When asked about the educational standard of the respondent 156 out of 300 respondents (52.0 percent) were found uneducated while 16.67 percent respondents were educated till High School, 23.0 percent respondents were educated till Intermediate and 8.33 percent respondents were educated above. When asked about the family member, acquaintance

or relative of the respondent on the reserved post. 57.0 percent respondents stated that they had some of their distant relatives on the reserved post. 11.33 percent respondents replied that they had some of their close relatives on the reserved post, while 23.0 percent respondents stated that they had some of their friends on the reserved post. While 8.67 percent respondents stated that they don't know anyone holding any reserved post.

When asked about the improvement in the condition of the Scheduled Caste by the governmental policies in contrast to the past 63.33 percent respondent stated that the condition of the Scheduled Castes continue to remain backward, 36.67 percent respondents stated the Scheduled Castes still rank inferior while none of the respondents responded that the status of Scheduled Caste is equal to that of non-Scheduled Caste is equal to that of non-Scheduled Caste Hindu.

When asked whether the conditions of scheduled castes has become so advanced that they don't need reservation any more. Only 0.67 percent of respondents agreed to same extent while 98.0 percent respondents strongly disagreed and 1.33 percent respondents did not said anything about it when asked whether the programmes destroy the initiative of the members of the Scheduled Caste communities 12.67 percent respondents fully agreed, while 18.67 percent respondents partially agreed. 53.33 percent respondents totally disagreed and 15.33 percent respondents did not said anything about it.

When asked whether they had encountered any difficulty with reference to any programmes, 55.67 respondents stated that they are unable to say anything while 11.0 percent respondents stated that they had no difficulty while 33.33 percent respondents stated they are not well aware of the governmental programmes.

When asked to give any comment or suggestion as the welfare programs for the Scheduled Castes, Majority of the respondents (82.0 percent) responded that only the real beneficiaries should benefited by the programs and 18.0 percent respondent stated that the benefit should not be given to those who are financially sound. Only the financial criterion should be taken into account while granting benefit to the beneficiaries.

(iv) SUMMARY OF THE FINDINGS:

The scrutiny of responses obtained from 300 respondents collected from the three districts of Uttar Pradesh (Aligarh, Agra and Rampur) has enabled us to come to the following findings which are as follows:

- (a) The execution of political safeguards in favour of scheduled castes has really made the positive impact on the political life of the scheduled castes to the extent that they have been enabled to share political power in the light of constitutional philosophy enshrined in Article 330 and 332 of the Indian Constitution. The study reveals that the Scheduled Castes in the three districts of U.P. are not politically quite aware of their political rights and are interested in sharing political power at village, state and national levels. It is well established from the fact that 218 respondents out of 300 are active members of the political organisations and few are constantly paying retention fee to retain their membership in the said organisations. What is unfortunate is that despite their political consciousness to share political power, they have not been able to win any general seat in Lok Sabha (House of the People) and Vidhan Sabha (Assemblies) Rather, the study established they have been defeated miserably. It is with this view in mind that 75.33 percent respondents have strongly stressed that reservation of seats in the legislative bodies must be continued for ever. What is visible is that political awareness is growing fastly among them and

they are struggling hard to find out ways and means to enable them to share political power on equal footing with higher strata of the society.

- (b) It is also established from the present study that the government of Uttar Pradesh has really evolve an adequate and satisfactory administrative apparatus for the implementation of the constitutional safeguards to scheduled castes and had unable to achieved a great deal of success in weeding out the feeling of untouchability in the society as 72.33 percent respondents have frankly admitted that they have been humiliated on the basis of caste feeling . Their responses have gone to the extent of establishing that the government machinery is not even helping them in safeguarding their social interests and even the police department is not been sympathetic and helpful in registering their cases against the upper strata of the society as when any atrocity is caused on them by the members of higher castes. The respondents also feel that police people are harsh and refuse to them in registering their cases of atrocities against the people of higher castes. Similarly 90.67 percent respondents admit that upper castes people do not allow them to share water from the same source. Similarly the majority of respondents admit that they have been restricted to enter the temples. Even the practice of dinning with the people of higher castes is not prevalent in their villages.
- (c) It is also well established from the responses that scheduled castes have been able to change their livelihood and have virtually enable themselves to raise their standard of living appreciably. 92.67 respondents do not agreed that the benefits of reservation under various schemes initiated by the government for their upliftment have been reaped by them evenly. More over, majority respondents admit that their way of life has not undergone any change because of the impact of reservation policy. They agree that the old customs, occupations,

practices in their villages are now a movement from traditional to modern society. No effort has been made by the government to remove the poverty of scheduled castes.

- (d) It is also well founded from the study that government of Uttar Pradesh is trying his best in generating an healthy educational environment in the state. This is born out by the fact that 21.67 percent have stated in their responses that there are few educational institutions in their localities and hence they are now feeling no hardship in sending their children to school, but the problem is of higher education and they have no facility of higher education in their locality. Quite a few respondents responded that their children are getting incentives in the form of free books, copies, attendance scholarships, uniforms, merit scholarships etc. The truth is that the literacy rate among scheduled caste is still very low. The study leads us to a conclusion that the government has to put his earnest efforts to promote healthy educational environment in the state and to extend the fruits of reservation policy to those who really deserves and for whom it is meant.
- (e) It is well founded from the responses of the beneficiaries that the government of Uttar Pradesh is struggling hard to translate the spirit of Article 16(4) of the Indian Constitution into action. The benefits are being afforded in the form of relaxation of required experience, fee concession, pre-examination coaching, separate interviews etc. But what is disheartening is that despite of all these efforts there appears something lacking to have healthy effect of reservation policy in the jobs of the government, public sector undertakings, municipal corporation, banks and other autonomous bodies. The responses of the beneficiaries discloses that majority of scheduled caste families have no representation in services. There are only 39.0 percent families who

have less than 5 members in the government jobs and 12.33 percent families who have more than 5 members in the government jobs. But the majority that is there are 48.67 percent families who have no member in the government job. Thus it is evident that the benefit of reservation in employment is being hijacked by the creamy layer of the scheduled castes and majority of scheduled castes still being deprived of this benefit.

- (f) The study also established that the beneficiaries have a good deal of awareness about the constitutional provisions and other legislative measures designed for their benefit. It is evident from the fact that 67.67 percent respondents agree that they are fully aware of the welfare legislation and constitutional safeguards which the government has enacted from time to time for them. They have even stated that they know that there is a provision in the National Charter to knock at the door of judiciary if their rights are violated. 99.33 percent respondents claim that they know about the provisions of untouchability Act enacted for the eradication of untouchability from the society. All this establishes that there is a great degree of awareness among the scheduled castes and are actively conscious to vindicate their rights and reap the benefits available to them under various welfare legislation.
- (g) It is established from the study in hand that execution of constitutional safeguards in favour of scheduled castes in three district of UP has unabled them to come on par with the other section of society. What is transpired from the study is that the people belonging to scheduled castes are not ready to forego the policy of reservation designed under our National Charter. It is evident from the fact that 75.33 percent respondents have strongly asserted that the reservation policy must be continued for ever and moreover 63.33 percent respondents have also

asserted that there is no improvement in the condition of the scheduled castes by the governmental policy in contrast to the past and 98.0 percent don't agree that they have become so advanced that they don't need reservation any more. Finally the study also establishes that 82.0 percent of the respondents suggested that the benefits should be given to the real beneficiaries and the government should fix certain income criteria for the beneficiaries. It should not be given to those who are financially sound. If the governmental policies are properly implemented then only the backwardness will be eradicated and reservation policy will become more judicious and fruitful.

**PRIMARY CENSUS ABSTRACT OF
SCHEDULED CASTES AND SCHEDULED
TRIBES POPULATION**

STATE PRIMARY CENSUS ABSTRACT FOR SC

State/District	Total Rural/Urban	No. of Household with S/C Members	Total S/C Population			Total S/C Population in age group 0-6			Literates		
			Persons	Males	Females	Persons	Males	Females	Persons	Males	Females
Uttar Pradesh	T	5,254,907	29,276,455	15,599,178	13,677,277	6,296,305	3,260,806	3,035,499	6,170,691	5,03,471	1,137,220
	R	4,682,098	25,823,388	13,736,435	12,086,953	5,583,286	2,890,560	2,692,726	5,011,649	4,215,706	795,943
	U	5,72,809	3,453,067	1,862,743	1,590,324	713,019	370,246	342,773	1,159,042	817,765	341,277
Rampur Distt.	T	32,418	195,144	106,209	88,935	46,475	24,141	22,334	28,286	24,534	3,752
	R	29,704	178,572	97,246	81,326	42,727	22,203	20,524	23,428	20,994	2,434
	U	2,714	16,572	8,963	7,609	3,748	1,938	1,810	4,858	3,540	1,318
Aligarh Distt.	T	127,405	758,308	413,233	345,075	163,934	85,738	78,196	170,355	142,646	27,709
	R	105,222	611,929	334,441	277,488	137,237	71,755	65,482	136,615	117,876	18,739
	U	22,183	146,379	78,792	67,587	26,697	13,983	12,714	33,740	24,770	8,970
Agra Distt.	T	101,915	638,333	348,897	289,436	144,113	75,906	68,207	160,124	127,765	32,359
	R	60,963	360,688	198,861	161,827	83,394	44,133	39,261	82,109	71,630	10,479
	U	40,952	277,645	150,036	127,609	60,719	31,773	28,946	78,015	56,135	21,880

**TOTAL POPULATION S/C POPULATION AND S/T POPULATION
IN DISTRICTS BY RESIDENCE**

India/State or District	UT/District Urban	Total/Rural S/C	Total Population S/T	Population
U.P.	T	139112287	2927645	287901
	R	111506372	25823388	271028
	U	27605915	3453067	16873
Rampur	T	1502141	195144	51
	R	1109425	178572	15
	U	392716	165772	36
Aligarh	T	3295982	758308	127
	R	2467484	611929	71
	U	828498	146379	56
Agra	T	27511021	638333	266
	R	1639935	3606688	156
	U	1111086	277645	110

T = Total
 R = Rural
 U = Urban
 S/C = Scheduled Castes
 S/T = Scheduled Tribes

**SCHEDULED CASTES POPULATION AS PERCENTAGE OF TOTAL POPULATION
IN RURAL AND URBAN AREAS, 1991**

State/District	Percentage of Scheduled Castes									
	Total			Rural			Urban			
	Persons	M	F	Persons	M	F	Persons	M	F	
1	2	3	4	5	6	7	8	9	10	
Uttar Pradesh Aligarh Mathura Meerutpur	21.05	21.07	21.02	23.16	23.20	23.11	12.51	12.55	12.46	
	23.01	23.10	22.90	24.80	24.86	24.72	17.67	17.76	17.56	
	23.20	23.23	23.17	21.99	22.01	21.97	24.99	25.07	24.89	
	12.99	13.14	12.82	16.10	16.18	15.99	4.22	4.32	4.11	

RURAL/URBAN DISTRIBUTION OF SCHEDULED TRIBES 1991

1	2	3	4	5	6	7	8	9	10
Uttar Pradesh	100.00	100.00	100.00	94.14	93.84	94.47	5.86	6.16	5.53
Meerut	100.00	100.00	100.00	29.41	28.57	33.33	70.59	71.43	66.67
Aligarh	100.00	100.00	100.00	55.91	58.44	52.00	44.09	41.56	48.00
Mathura	100.00	100.00	100.00	58.65	67.32	46.90	41.33	32.68	53.10

**POPULATION OF S/C AND ST'S IN EACH DISTRICT, THEIR PROPORTION TO TOTAL POPULATION
AND THEIR PERCENTAGE DISTRIBUTION IN DISTRICTS, 1991**

State/District	S/C & ST's Population as Percentage of Total Population	S/C Population as % of Total Population	ST Population as % of Total Population	S/C Population in Each District as % of Total SC Population of the State	ST Population in Each District as % of Total SC Population of the State
1	2	3	4	5	6
Uttar Pradesh	21.25	21.05	0.21	100.00	100.00
Aligarh	23.01	23.01	0.00	2.59	0.04
Rampur	12.99	12.99	0.00	0.67	0.02
Agra	23.21	23.20	0.01	2.18	0.09

SC AND ST POPULATION AS PERCENTAGE OF TOTAL POPULATION, 1981 AND 1991

State/District	% of SC in		% of ST in	
	1981	1991	1981	1991
1	2	3	4	5
Uttar Pradesh	21.16	21.05	0.21	0.21
Rampur	13.06	12.99	0.00	0.00
Aligarh	22.50	23.01	0.00	0.00
Agra	23.73	23.20	0.07	0.01

**COMPARATIVE AND TOTAL DATA
OBTAINED FROM THE RESPONDENTS IN
THREE DISTRICTS OF UTTAR PRADESH**

**COMPARATIVE DATA OF THE RESPONSES OF THE
RESPONDENTS IN THREE DISTRICTS OF UTTAR
PRADESH (RAMPUR, AGRA & ALIGARH)**

M	=	Male
F	=	Female
UM	=	Educated Male
UF	=	Educated Female
UEM	=	Uneducated Male
UEF	=	Uneducated Female
Y	=	Yes
N	=	No
%age	=	Percentage
F	=	Frequency
S/C	=	Scheduled Castes
S/T	=	Scheduled Tribes

TOTAL NO. OF RESPONDENTS IN EACH DISTRICT = 100

$Q_1, Q_2, Q_3, \dots, Q_{40}$ are the questions mentioned in the questionnaire form.

Choice-1, Choice-2, Choice-3, and Choice-4 are also mentioned in the questionnaire form.

TABLE-I : AGE OF THE RESPONDENTS IN THREE DISTRICTS

S. No.	Age Groups Years	Rampur			Agra			Aligarh				Total M	Total F
		M	%age	F	%age	M	%age	F	%age	M	%age		
1.	10-20	0	0%	1	1%	5	5%	2	2%	5	5%	10	5
2.	20-30	37	32%	5	5%	42	42%	10	10%	45	45%	114	22
3.	30-40	38	38%	12	12%	21	21%	13	13%	20	20%	79	45
4.	40-50	4	4%	3	3%	3	3%	4	4%	6	6%	13	12

TABLE-II : MALE/FEMALE RESPONDENTS IN THREE DISTRICTS

Total Males = 216, Total Females = 84

S. No.	Rampur				Agra				Aligarh				Total EM	Total UEM
	EM	%age	UEM	%age	EM	%age	UEM	%age	EM	%age	UEM	%age		
1.	40	50.63	39	49.37	24	36.36	42	63.64	38	53.52	33	46.48	102	114
S. No.	EF	%age	UEF	%age	EF	%age	UEF	%age	EF	%age	UEF	%age	Total EF	Total UEF
1.	15	71.43	6	28.57	18	52.94	20	47.06	9	31.03	16	68.97	42	42

TABLE-III : CASTE WISE DISTRIBUTION OF RESPONDENTS IN THREE DISTRICTS

S. No.	Answers	Rampur		Agra		Aligarh		Total
		Freq.	%age	Freq.	%age	Freq.	%age	
1.	Valmiki	51	51	40	40	63	63	154
2.	Kumhar	12	12	5	5	4	4	21
3.	Kahar	8	8	7	7	2	2	17
4.	Jatava	19	19	30	30	21	21	70
5.	Prajapati	5	5	6	6	4	4	15
6.	Dhobi	5	5	12	12	6	6	23

TABLE - IV

S. No.	Questions	Rampur				Agra				Aligarh				Total Yes	Total No
		Yes	%age	No	%age	Yes	%age	No	%age	Yes	%age	No	%age		
1.	Q ₁	66	66	34	34	82	82	18	18	70	70	30	30	218	82
2.	Q ₂	5	5	95	95	12	12	86	86	14	14	88	88	31	269
3.	Q ₃	98	98	2	2	90	90	10	10	93	93	7	7	281	19
4.	Q ₄	35	35	65	65	55	55	45	45	47	47	53	53	137	163
5.	Q ₅	1	1	99	99	12	12	88	88	13	13	87	87	26	274
6.	Q ₆	16	16	84	84	15	15	85	85	3	3	97	97	34	266
7.	Q ₇ Meetings Procession	76	76	24	24	85	85	15	15	67	67	33	33	228	72
8.	Q ₈	35	35	65	65	31	31	69	69	48	48	52	52	114	186
9.	Q ₉	84	84	16	16	78	78	22	22	83	83	17	17	245	55
10.	Q ₁₀	68	68	32	32	52	52	48	48	69	69	31	31	189	111
11.	Q ₁₁	87	87	13	13	78	78	22	22	74	74	26	26	239	61
12.	Q ₁₂	21	21	79	79	52	52	69	69	31	31	48	48	104	196
		77	77	23	23	65	65	25	25	75	75	35	35	217	3

TABLE - IV Contd.

S. No.	Questions	Rampur			Agra			Aligarh			Total	Total
		Yes	%age	No	%age	Yes	%age	No	%age	Yes	Total	Total No
13.	Q ₁₃	12	12	88	88	12	12	88	88	9	33	267
14.	Q ₁₄	48	48	52	52	78	78	23	23	77	203	97
15.	Q ₁₅	20	20	80	80	65	65	34	34	66	151	149
16.	Q ₁₆	98	98	2	2	100	100	0	0	100	298	2
17.	Q ₁₇	7	7	93	93	15	15	85	85	6	28	272
18.	Q ₁₈	25	25	75	75	14	14	86	86	15	54	246
19.	Q ₁₉	83	83	17	17	88	88	12	12	87	258	42
20.	Q ₂₀	20	20	80	80	27	27	73	73	24	71	229
21.	Q ₂₁	14	14	86	86	12	12	88	88	27	53	247
22.	Q ₂₂	45	45	55	55	24	24	76	76	54	123	177
23.	Q ₂₃	12	12	88	88	30	30	70	70	23	65	235
24.	Q ₂₄	11	11	89	89	33	33	77	77	12	56	244
25.	Q ₂₅	42	42	58	58	38	38	62	62	31	111	189

TABLE - IV Contd.

S. No.	Questions	Rampur			Agra			Aligarh				Total Yes	Total No
		Yes	%age	No	%age	Yes	%age	No	%age	Yes	%age		
26.	Q ₂₆	12	12	88	88	21	21	79	79	25	25	58	217
27.	Q ₂₇	13	13	87	87	20	20	80	80	43	43	76	224
28.	Q ₂₈	26	26	74	74	25	25	75	75	29	29	80	220
29.	Q ₂₉	0	0	100	100	14	14	86	86	12	12	26	274
30.	Q ₃₀	13	13	87	87	11	11	89	89	20	20	44	256
31.	Q ₃₁	21	21	79	79	75	75	25	25	83	83	179	121
32.	Q ₃₂	17	17	83	83	15	15	85	85	9	9	41	259
33.	Q ₃₃	75	75	25	25	55	55	45	45	19	19	149	151
34.	Q ₃₄	89	89	11	11	84	84	6	6	92	92	265	35
35.	Q ₃₅	977	97	3	3	95	95	5	5	98	98	290	10
36.	Q ₃₆	3	3	97	97	2	2	98	98	0	0	5	295
37.	Q ₃₇	8	8	92	92	10	10	90	90	14	14	22	278
38.	Q ₃₈	79	79	21	21	85	85	15	15	85	85	249	51

TABLE - IV Contd.

S. No.	Questions	Rampur			Agra			Aligarh			Total Yes	Total No
		Yes	%age	No	%age	Yes	%age	No	%age	Yes		
39.	Q ₃₉	15	15	85	85	8	8	95	95	5	28	272
40.	Q ₄₀	13	13	87	87	9	9	91	91	5	27	273
41.	Q ₄₁	3	3	97	97	5	5	95	95	1	9	291

TABLE - V : CRITERIA OF CASTING VOTES IN THE VILLAGE ELECTION (Q. 42)

S. No.	Answers	Rampur		Agra		Aligarh		Total
		Freq.	%age	Freq.	%age	Freq.	%age	
1.	Choice - 1	13	13	25	25	22	22	60
2.	Choice - 2	51	51	49	49	53	53	153
3.	Choice - 3	36	36	26	26	25	25	27

TABLE - VI : MANNER IN WHICH THE S/C RESPONDENT WORKED FOR ANY POLITICAL PARTY IN AN ELECTION (Q. 43)

S No.	Answers	Rampur		Agra		Aligarh		Total
		Freq.	%age	Freq.	%age	Freq.	%age	
1.	Choice - 1	30	30	28	28	23	23	81
2.	Choice - 2	22	22	13	13	27	27	62
3.	Choice - 3	4	4	14	14	15	15	33
4.	Choice - 4	28	28	28	28	13	13	69
5.	Choice - 5	16	16	17	17	22	22	55

TABLE - VII : WHETHER RESERVATION OF SEATS IN LEGISLATURE SHOULD CONTINUE (Q. 44)

S. No.	Answers	Rampur		Agra		Aligarh		Total
		Freq.	%age	Freq.	%age	Freq.	%age	
1.	Choice - 1	49	49	98	98	79	79	226
2.	Choice - 2	51	51	2	2	21	21	74

TABLE - VIII : PARTY WHICH IS THE WELL WISHER OF S/C (Q. 45)

S. No.	Answers	Rampur		Agra		Aligarh		Total
		Freq.	%age	Freq.	%age	Freq.	%age	
1.	Choice - 1	15	15	28	28	20	20	63
2.	Choice - 2	35	35	34	34	62	62	131
3.	Choice - 3	42	42	38	38	18	18	98
4.	Choice - 4	8	8	0	0	0	0	08

TABLE - IX : WHETHER GOVERNMENTAL PROGRAMMES FOR THE UPLIFTMENT OF S/C ARE BENEFICIAL (Q. 46)

S. No.	Answers	Rampur		Agra		Aligarh		Total
		Freq.	%age	Freq.	%age	Freq.	%age	
1.	Choice - 1	68	68	75	75	57	57	200
2.	Choice - 2	2	2	5	5	5	5	12
3.	Choice - 3	0	0	0	0	0	0	0
4.	Choice - 4	30	30	20	20	28	28	88

TABLE - X : WHETHER GOVERNMENTAL PROGRAMMES ARE PROPERLY ADMINISTERED (Q. 47)

S. No.	Answers	Rampur		Agra		Aligarh		Total
		Freq.	%age	Freq.	%age	Freq.	%age	
1.	Choice - 1	77	77	70	70	62	62	209
2.	Choice - 2	0	0	0	0	0	0	0
3.	Choice - 3	2	2	19	19	8	8	29
4.	Choice - 4	21	21	11	11	30	30	62

TABLE - XI : WHETHER RESERVATION FACILITY PROVIDED IN THE EDUCATIONAL INSTITUTION ARE ADEQUATE IN TERMS OF NO. OF SCHEDULED CASTE STUDENTS SEEKING ADMISION (Q. 48)

S. No.	Answers	Rampur		Agra		Aligarh		Total
		Freq.	%age	Freq.	%age	Freq.	%age	
1.	Choice - 1	72	72	88	88	77	77	237
2.	Choice - 2	8	8	2	2	14	14	24
3.	Choice - 3	20	20	10	10	9	9	39

TABLE - XII : SIZE OF THE FAMILY OF THE RESPONDENTS (Q. 49)

S. No.	Answers	Rampur		Agra		Aligarh		Total
		Freq.	%age	Freq.	%age	Freq.	%age	
1.	Choice - 1	2	2	5	5	5	5	12
2.	Choice - 2	13	13	22	22	7	7	42
3.	Choice - 3	28	28	37	37	30	30	95
4.	Choice - 4	57	57	36	36	58	58	151

TABLE - XIII : SIZE OF THE HOLDINGS OF THE RESPONDENTS IN BIGHAS (Q. 50)

S. No.	Answers	Rampur		Agra		Aligarh		Total
		Freq.	%age	Freq.	%age	Freq.	%age	
1.	Choice - 1	27	27	37	37	18	18	82
2.	Choice - 2	38	38	29	29	38	38	105
3.	Choice - 3	20	20	3	3	10	10	33
4.	Choice - 4	15	15	31	31	34	34	80

TABLE - XIV : PRINCIPAL SOURCE OF LIVELIHOOD OF THE RESPONDENTS (Q. 51)

S. No.	Answers	Rampur		Agra		Aligarh		Total
		Freq.	%age	Freq.	%age	Freq.	%age	
1.	Choice - 1	18	18	14	14	14	14	46
2.	Choice - 2	5	5	27	27	3	3	35
3.	Choice - 3	37	37	20	20	31	31	88
4.	Choice - 4	40	40	39	39	52	52	131

TABLE - XV : ANNUAL INCOME WHICH THE RESPONDENTS GET OUT OF THEIR HOLDINGS (Q. 52)

S. No.	Answers	Rampur		Agra		Aligarh		Total
		Freq.	%age	Freq.	%age	Freq.	%age	
1.	Choice - 1	45	45	38	38	53	53	136
2.	Choice - 2	27	27	22	22	28	28	77
3.	Choice - 3	23	23	15	15	3	3	41
4.	Choice - 4	5	5	25	25	16	16	46

TABLE - XVI : MEMBERS OF THE FAMILY OF THE RESPONDENTS IN GOVT. JOBS (Q. 53)

S. No.	Answers	Rampur		Agra		Aligarh		Total
		Freq.	%age	Freq.	%age	Freq.	%age	
1.	Choice - 1	34	34	35	35	48	48	117
2.	Choice - 2	10	10	10	10	17	17	37
3.	Choice - 3	56	56	55	55	35	35	146

TABLE - XVII : EFFECT OF THE BEHAVIOUR OF THE COLLEAGUES IN THE OFFICE (Q. 54)

S. No.	Answers	Rampur		Agra		Aligarh		Total
		Freq.	%age	Freq.	%age	Freq.	%age	
1.	Choice - 1	28	28	21	21	23	23	72
2.	Choice - 2	63	63	75	75	55	55	193
3.	Choice - 3	9	9	4	4	22	22	35

TABLE - XVIII : NATURE OF THE JOB OF THE RESPONDENTS (RESPONDENTS IN GOVT. JOBS = 117+37=154) (Q. 55)

S. No.	Answers	Rampur		Agra		Aligarh		Total
		Freq.	%age	Freq.	%age	Freq.	%age	
1.	Choice - 1	3	6.82	15	33.33	22	33.85	40
2.	Choice - 2	12	27.27	10	22.22	17	26.15	39
3.	Choice - 3	16	36.36	12	26.67	15	23.08	43
4.	Choice - 4	13	29.55	8	17.78	11	16.92	32

TABLE - XIX : EDUCATIONAL STANDARD OF THE RESPONDENTS (Q. 56)

S. No.	Answers	Rampur		Agra		Aligarh		Total
		Freq.	%age	Freq.	%age	Freq.	%age	
1.	Choice - 1	14	14	20	20	16	16	50
2.	Choice - 2	23	23	21	21	25	25	69
3.	Choice - 3	12	12	6	6	7	7	25
4.	Choice - 4	51	51	53	53	52	52	156

TABLE - XX : ATTITUDE OF THE BOSS ON THE RESPONDENT (Q. 57)

S. No.	Answers	Rampur		Agra		Aligarh		Total
		Freq.	%age	Freq.	%age	Freq.	%age	
1.	Choice - 1	12	12	7	7	10	10	29
2.	Choice - 2	53	53	65	65	59	59	177
3.	Choice - 3	35	35	28	28	31	31	94
4.	Choice - 4	0	0	0	0	0	0	02

TABLE - XXI : DO YOU THINK THAT THE RESERVATION POLICY HAS ENABLED THE S/C TO OBTAIN JOBS (Q. 58)

S. No.	Answers	Rampur		Agra		Aligarh		Total
		Freq.	%age	Freq.	%age	Freq.	%age	
1.	Choice - 1	3	3	10	10	5	5	18
2.	Choice - 2	5	5	3	3	4	4	12
3.	Choice - 3	80	80	87	87	70	70	237
4.	Choice - 4	12	12	0	0	21	21	33

TABLE - XXII : ARE YOU IN FAVOUR OF INTRODUCING RESERVATION IN PRIVATE CONCERN (Q. 59)

S. No.	Answers	Rampur		Agra		Aligarh		Total
		Freq.	%age	Freq.	%age	Freq.	%age	
1.	Choice - 1	75	75	70	70	82	82	227
2.	Choice - 2	25	25	15	15	12	12	52
3.	Choice - 3	0	0	15	15	0	0	15
4.	Choice - 4	0	0	0	0	6	6	6

TABLE - XXIII : IS THERE ANY IMPROVEMENT IN THE CONDITION OF THE SCHEDULED CASTE BY THE GOVERNMENTAL POLICIES IN CONTRAST TO THE PAST (Q. 60)

S. No.	Answers	Rampur		Agra		Aligarh		Total
		Freq.	%age	Freq.	%age	Freq.	%age	
1.	Choice - 1	23	23	40	40	47	47	110
2.	Choice - 2	77	77	60	60	53	53	190
3.	Choice - 3	0	0	0	0	0	0	0
4.	Choice - 4	0	0	0	0	0	0	0

TABLE - XXIV : WHETHER RESERVATION POLICY SHOULD CONTINUE (Q. 61)

S. No.	Answers	Rampur		Agra		Aligarh		Total
		Freq.	%age	Freq.	%age	Freq.	%age	
1.	Choice - 1	95	95	98	98	89	89	282
2.	Choice - 2	5	5	2	2	11	11	18

TABLE - XXV : FAMILY MEMBER, ACQUAINTANCE OR RELATIVE OF THE RESPONDENT IN THE RESERVED POST)Q. 62)

S. No.	Answers	Rampur		Agra		Aligarh		Total
		Freq.	%age	Freq.	%age	Freq.	%age	
1.	Choice - 1	12	12	5	5	17	17	34
2.	Choice - 2	55	55	56	56	60	60	171
3.	Choice - 3	27	27	29	29	13	13	69
4.	Choice - 4	6	6	10	10	10	10	26

TABLE - XXVI : DO YOU AGREE THAT THE S/C HAVE ADVANCED SO MUCH THAT THEY DONT NEED RESERVATION ANY MORE (Q. 63)

S. No.	Answers	Rampur		Agra		Aligarh		Total
		Freq.	%age	Freq.	%age	Freq.	%age	
1.	Choice - 1	0	0	0	0	0	0	0
2.	Choice - 2	0	0	0	0	2	2	2
3.	Choice - 3	99	99	100	100	95	95	294
4.	Choice - 4	1	1	0	0	3	3	4

TABLE - XXVII : DOES THE PROGRAMMES DESTROY THE INITIATIVE OF THE MEMBERS OF THESE COMMUNITIES (Q. 64)

S. No.	Answers	Rampur		Agra		Aligarh		Total
		Freq.	%age	Freq.	%age	Freq.	%age	
1.	Choice - 1	13	13	15	15	10	10	38
2.	Choice - 2	20	20	13	13	23	23	56
3.	Choice - 3	48	48	60	60	52	52	160
4.	Choice - 4	19	19	12	12	15	15	46

TABLE - XXVIII : HAVE YOU ENCOUNTERED ANY DIFFICULTY WITH REFERENCE TO ANY PROGRAMMES (Q. 65)

S. No.	Answers	Rampur		Agra		Aligarh		Total
		Freq.	%age	Freq.	%age	Freq.	%age	
1.	Choice - 1	13	13	5	5	15	15	33
2.	Choice - 2	57	57	50	50	60	60	167
3.	Choice - 3	30	30	45	45	25	25	100

TABLE - XXIX : GENERAL COMMENT AND SUGGESTION ON THE WELFARE PROGRAMS FOR THE RESPONDENT (Q. 66)

S. No.	Answers	Rampur		Agra		Aligarh		Total
		Freq.	%age	Freq.	%age	Freq.	%age	
1.	Choice - 1	89	89	77	77	80	80	246
2.	Choice - 2	11	11	23	23	20	20	54

.IMPACT OF RESERVATION POLICY ON THE SOCIAL, ECONOMIC & POLITICAL LIFE OF THE BENEFICIARIES IN THREE DISTRICTS OF U.P. (RAMPUR, ALIGARH & AGRA)

TABLE - I

(i) Age of the Respondents (Total = 300)

S.No	Age groups	Males	%age	Female	%age
1.	10-20 yrs.	10	3.33	5	1.66
2.	20-30 yrs.	114	38.0	22	7.33
3.	30-40 yrs.	79	26.33	45	15.0
4.	40 yrs and above	13	4.33	12	4.0

TABLE - II

(ii) Male & Female Respondents (Total = 300)

Male (216)			Female (84)					
S.No.	Educated Male	%age	Uneducated Male	%age	Educated Female	%age	Uneducated Female	%age
1.	102	47.22	114	52.73	42	50.0	42	50.0

TABLE - III

(iii) Caste wise Distribution of the Respondents in three districts (Total = 300)

S.No.	Castes	Frequency	%age
1.	Valmiki	154	51.33
2.	Kumhar	21	7.00
3.	Kahar	17	5.67
4.	Jatava	70	23.33
5.	Prajapati	15	5.00
6.	Dhobi	23	7.67

TABLE - IV

RESPONSE TO THE QUESTIONNAIRE IN ALL THE THREE DISTRICTS (ALIGARH, AGRA, RAMPUR)

S.No.	Questions	YES	%age	NO	%age	TOTAL
1.	Are you active member of the pol. Organisation in your village	218	72.67	82	27.33	300
2.	Are you a regular subscriber of the fee to retain membership in the party.	31	10.33	269	89.67	300
3.	Whether you cast votes in the Panchayat Vidhan Sabha and Lok Sabha	281	93.67	19	6.33	300
4.	Whether you have ever contested non-reserved seat	26	8.67	274	91.33	300
5.	Whether your votes are ever purchased by pol. Parties by money or muscle strength	137	45.67	163	54.33	300
6.	Whether you had ever won only election against open seat	34	11.33	266	88.67	300

S.No.	Questions	YES	%age	NO	%age	TOTAL
7.	Have you ever participated in processions, rallies etc. of the political party					
	MEETINGS	228	76.0	72	24.0	300
	PROCESSIONS	114	38.0	186	62.0	300
8.	Have you worked for any political party in the election	245	81.67	55	18.33	300
9.	Are you an active worker of the political party	189	63.0	111	37.0	300
10.	Is any one in you family an active worker of pol. Party	239	79.67	61	20.33	300
11.	Whether Panchayats are playing significant role in the light of constitutional commitment	104	34.67	196	65.33	300
12.	Are atrocities being caused by upper castes	217	72.33	83	27.67	300
13.	Whether police is helpful in registering a case against upper castes	33	11.0	267	89.0	300
14.	Are you aware of the welfare legislations and safeguards for S/C	203	67.67	97	32.33	300
15.	Are you aware that certain posts are reserved for S/C in public sector enterprises	151	50.33	149	49.67	300
16.	Are you aware that untouchability is an offence	298	99.33	02	0.67	300
17.	Are you allowed to share water from the same source	28	9.33	272	90.67	300
18.	Are you allowed to share meal with upper castes in marriages and parties etc.	54	18.0	246	82.0	300
19.	Are you humiliated by upper castes in your village.	258	86.0	42	14.0	300
20.	Have you ever registered any case against upper castes on ground of humiliation	71	23.67	229	76.33	300
21.	Whether you have medical/health facilities in your village	53	17.67	247	82.33	300
22.	Whether your villages are connected by road facilities	123	41.0	177	59.0	300
23.	Do you have educational facilities in your village	65	21.67	235	78.33	300
24.	Does you or your children get help in the form of fees, copies, attendance, scholarship, uniform from the govt.	56	18.67	244	81.33	300
25.	Does you or your children get the benefit of reservation in admission to educational institution	111	37.0	189	63.0	300
26.	Have you ever recovered monetary help under various schemes from the govt.	58	19.33	242	80.67	300
27.	Have you taken any loan from the banks	76	25.33	224	74.67	300
28.	Is there any female working member in your family	80	26.67	220	73.33	300
29.	Is she facing any sexual harassment in the office	26	08.67	274	91.33	300
30.	Does you or your children have got govt. jobs on the basis of reservation policy	44	14.67	256	85.33	300
31.	Are you aware of the reservation of jobs in govt. and public undertakings	179	59.67	121	40.33	300
32.	Has the reservation policy enabled the S/C to obtain jobs to a large extent	41	13.67	259	86.33	300
33.	Has the reservation policy helped to get only govt. jobs and not private jobs	149	49.67	151	50.33	300

S.No.	Questions	YES	%age	NO	%age	TOTAL
34.	Is there any discrimination on the caste basis at promotion level	265	88.33	35	11.67	300
35.	Have you or any member of your family ever experienced any ill treatment from upper castes of your locality	290	96.67	10	3.33	300
36.	Do you think that programs are destroying your self-respect	5	01.67	295	98.33	300
37.	Whether benefits of reservation policy being reaped by all members of S/C	22	7.33	278	92.67	300
38.	Do you think at the task you perform (scavanging sweeping etc.) are degrading	249	83.0	51	17.0	300
39.	Are you permitted by the Upper Castes to enter into the temples	28	9.33	272	90.67	300
40.	Do you think that untouchability offence Act 1955 (Protector of Civil Rights Acts. 1978) has been properly implemented	27	9.0	273	91.0	300
41.	Do you think that by providing separate housing colony school, drinking water facilities, the govt. has been promoting segregation of untouchables instead of promoting their integration	09	3.0	291	97.0	300

TABLE - V

42. Criteria of Casting Votes in the Village Election:

S.No.	ANSWERS	FREQUENCY	%age	TOTAL
1.	Caste basis	60	20.0	300
2.	Cast the vote to the party	153	51.0	300
3.	Cast the vote on the merit of the contesting candidate	87	29.0	300

TABLE - VI

43. Manner in which the S/C respondent worked for any Political Party in an election:

S.No.	ANSWERS	FREQUENCY	%age	TOTAL
1.	Distributed pamphlets	81	27.0	300
2.	Shouted slogans	62	20.67	300
3.	Participated Processions	33	11.0	300
4.	Did canvassing	13	4.33	300
5.	Did nothing	55	18.33	300

TABLE - VII

44. Whether reservation of seats in Legislature should continue:

S.No.	ANSWERS	FREQUENCY	%age	TOTAL
1.	Must continue for ever	226	75.33	300
2.	Must be discontinued after five years.	74	24.67	300

TABLE - VIII

45. Party which is the well wisher of the Scheduled Castes:

S.No.	ANSWERS	FREQUENCY	%age	TOTAL
1.	Congress	63	21.0	300
2.	BJP	131	43.67	300
3.	BSP	98	32.67	300
4.	None	8	2.67	300

TABLE - IX

46. Whether governmental programs for the upliftment of S/C are beneficial:

S.No.	ANSWERS	FREQUENCY	%age	TOTAL
1.	Very beneficial	200	66.67	300
2.	Fairly beneficial	12	4.0	300
3.	Cannot say anything	0	0	300
4.	Benefits have not reached the deserving and for whom it is meant	88	29.33	300

TABLE - X

47. Whether governmental programs are properly administered:

S.No.	ANSWERS	FREQUENCY	%age	TOTAL
1.	Not administered satisfactorily	209	69.67	300
2.	Fully satisfied	0	0	300
3.	Fairly administered	29	9.67	300
4.	Cannot say anything as authorities may view it bad and would trouble them	62	20.67	300

TABLE - XI

48. Whether reservation facility provided in the educational institution are adequate in terms of number of S/C students seeking admission:

S.No.	ANSWERS	FREQUENCY	%age	TOTAL
1.	Not adequate	237	79.0	300
2.	Don't know	24	8.0	300
3.	Cannot say anything	39	13.0	300

TABLE - XII

49. Size of the family of the respondents:

S.No.	ANSWERS (MEMBERS)	FREQUENCY	%age	TOTAL
1.	0-5	12	4.0	300
2.	5-10	42	14.0	300
3.	10-15	95	31.67	300
4.	15-20	151	50.33	300

TABLE - XIII

50. Size of the holdings of the respondents in bighas:

S.No.	ANSWERS (BIGHAS)	FREQUENCY	%age	TOTAL
1.	0-5	82	27.33	300
2.	5-10	105	35.0	300
3.	More	33	11.0	300
4.	None	80	26.67	300

TABLE - XIV

51. Principal Source of livelihood of the respondents:

S.No.	ANSWERS	FREQUENCY	%age	TOTAL
1.	Service	46	15.33	300
2.	Business	35	11.67	300
3.	Farming	88	29.33	300
4.	Any other	131	43.67	300

TABLE - XV

52. Annual Income of the respondents which they get out of their holdings:

S.No.	ANSWERS (IN RUPPEES)	FREQUENCY	%age	TOTAL
1.	1000-5000	136	45.33	300
2.	5000-10000	77	25.67	300
3.	Below 1000	41	13.67	300
4.	Above 10,000	46	15.33	300

TABLE - XVI

53. Members of the family of the respondents in government jobs:

S.No.	ANSWERS	FREQUENCY	%age	TOTAL
1.	Below 5	117	39.0	300
2.	Above 5	37	12.33	300
3.	None	146	48.67	300

TABLE - XVII

54. Effect of behaviour of the colleagues in the Office:

S.No.	ANSWERS	FREQUENCY	%age	TOTAL
1.	Yes to same extent	72	24.0	300
2.	Yes to large extent	193	64.33	300
3.	No, not at all	35	11.67	300

TABLE - XVIII

55. Nature of the govt. job of the respondents:

S.No.	ANSWERS	FREQUENCY	%age	TOTAL
1.	Class I	40	25.97	154
2.	Class II	39	25.32	154
3.	Class III	43	27.92	154
4.	Class IV	32	20.79	154

TABLE - XIX

56. Educational standard of the respondent:

S.No.	ANSWERS	FREQUENCY	%age	TOTAL
1.	High School	50	16.67	300
2.	Intermediate	69	23.0	300
3.	Above	25	8.33	300
4.	Uneducated	156	52.0	300

TABLE - XX

57. Attitude of the boss on the respondents

S.No.	ANSWERS	FREQUENCY	%age	TOTAL
1.	V. helpful	29	9.67	300
2.	Don't pay extra attention	177	59.0	300
3.	Not at all helpful	94	31.33	300
4.	Any other comment	0	0	300

TABLE - XXI

58. Do you think that the reservation policy has enabled the S/C to obtain jobs

S.No.	ANSWERS	FREQUENCY	%age	TOTAL
1.	Yes to large extent	18	6.0	300
2.	No, it has helped in govt. jobs and not in private jobs	12	4.0	300
3.	It has not helped too much in obtaining jobs	237	79.0	300
4.	Can't say anything	33	11.0	300

TABLE - XXII

59. Are you in favour of introducing reservation in private concern.

S.No.	ANSWERS	FREQUENCY	%age	TOTAL
1.	Yes, they will be helpful.	227	75.67	300
2.	They will not be of much use	52	17.33	300
3.	Not in favour	15	5.0	300
4.	Cannot say any thing	06	2.0	300

TABLE - XXIII

60. Is there any improvement in the condition of the S/C's by the governmental policies in contrast to the past.

S.No.	ANSWERS	FREQUENCY	%age	TOTAL
1.	Scheduled Castes still rank inferior.	110	36.67	300
2.	Condition continue to remain backward	190	63.33	300
3.	Cannot say any thing	0	0	300
4.	States of S/C is equal to that of non scheduled caste Hindu.	0	0	300

TABLE - XXIV

61. Whether reservation policy should continue.

S.No.	ANSWERS	FREQUENCY	%age	TOTAL
1.	Their condition is not improved and they are still not able to complete.	282	94.0	300
2.	Cannot say any thing	18	6.0	300

TABLE - XXV

62. Family member, acquaintance or relative of the respondent on the reserved post.

S.No.	ANSWERS	FREQUENCY	%age	TOTAL
1.	Some of my close relatives.	34	11.33	300
2.	Some of my distant relatives.	171	57.0	300
3.	Some of my friends.	69	23.0	300
4.	Don't know any one.	26	8.67	300

TABLE - XXVI

63. Do you agree that S/C have advanced so much that they don't need reservation any more.

S.No.	ANSWERS	FREQUENCY	%age	TOTAL
1.	Agree to large extent	0	0	300
2.	Agree to same extent	02	0.67	300
3.	Don't agree	294	98.0	300
4.	Can't say any thing	4	1.33	300

TABLE - XXVII

64. Does the programs destroy the initiative of the members of these communities.

S.No.	ANSWERS	FREQUENCY	%age	TOTAL
1.	Fully agree	38	12.67	300
2.	Agree partially	56	18.67	300
3.	Do not agree	160	53.33	300
4.	Can't say any thing	46	15.33	300

TABLE - XXVIII

65. Have you encountered any difficulty with reference to any programs .

S.No.	ANSWERS	FREQUENCY	%age	TOTAL
1.	No difficulty.	33	11.0	300
2.	Cannot say any thing.	16.7	55.67	300
3.	Not aware of programs.	100	33.33	300

TABLE - XXIX

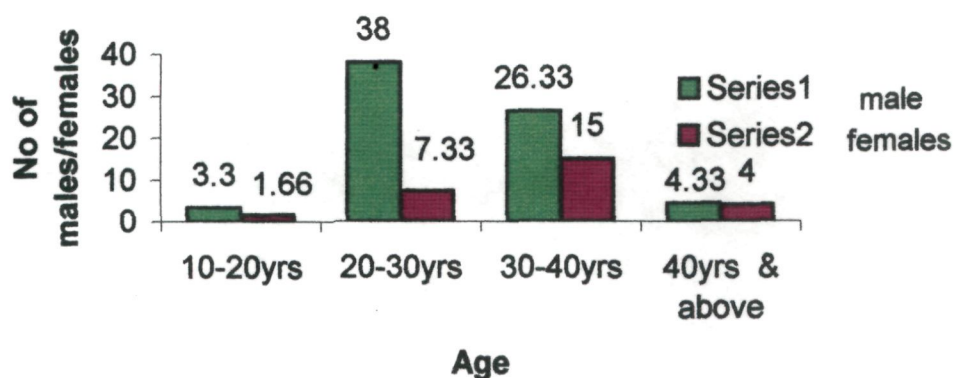
66. General comment and suggestion on welfare programs from the respondent.

S.NO.	ANSWERS	FREQUENCY	%age	TOTAL
1.	Benefits should reach the real beneficiaries	246	82.0	300
2.	It should not be given to those who are financially sound	54	18.0	300

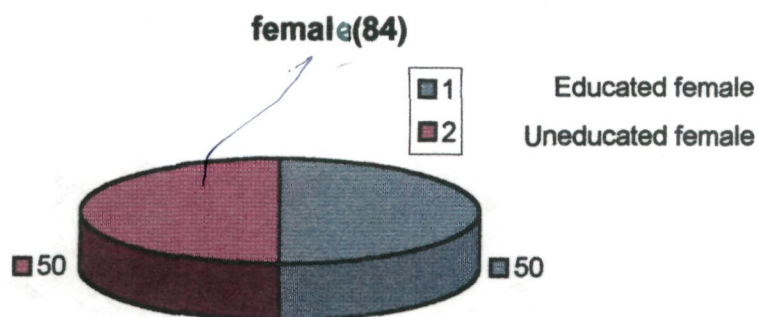
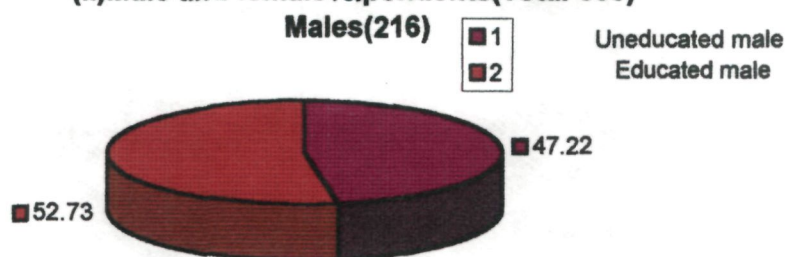
**BAR GRAPHS AND PIE CHARTS TO SHOW
THE IMPACT OF RESERVATION POLICY ON
THE SOCIAL ECONOMIC AND POLITICAL
LIFE OF THE BENEFICIARIES IN THREE
DISTRICTS OF UTTAR PRADESH**

IMPACT OF RESERVATION ON THE SOCIAL, ECONOMIC POL. LIFE OF THE BENEFICIARIES IN 3 DIST. OF UP(RAMPUR,ALIGARH AGRA)

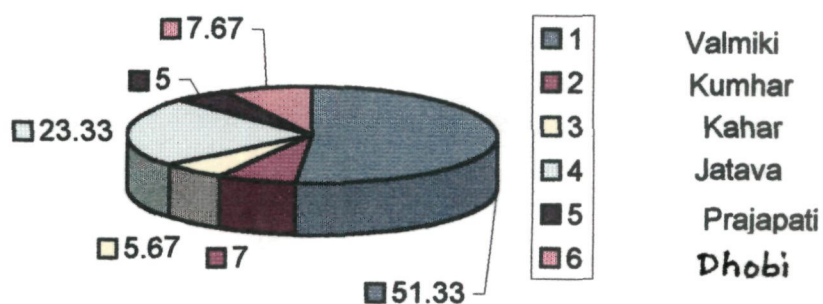
(I) Age of the Respondents (total-300)



(ii) Male and female respondents (Total-300)



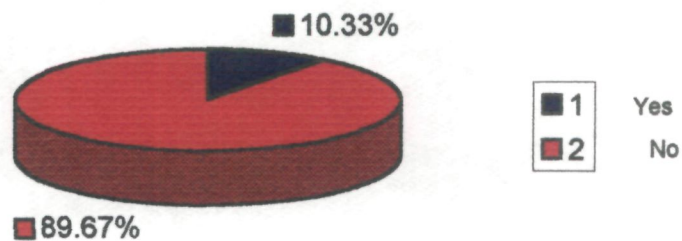
(III) Caste wise distribution of respondents in three districts (total-300)



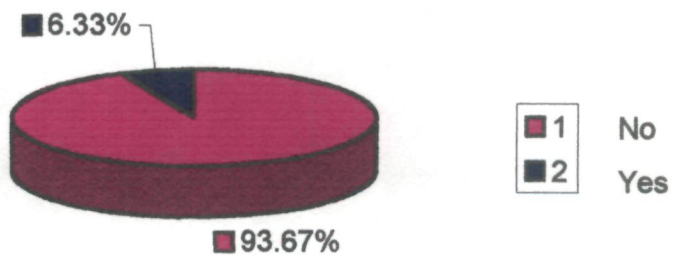
1.Are you active member of the pol.Organisation in your village?



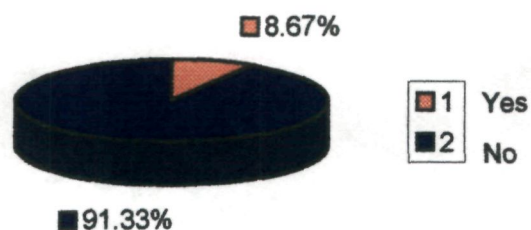
2.Are you a regular subscriber of the fee to retain membership in the party ?



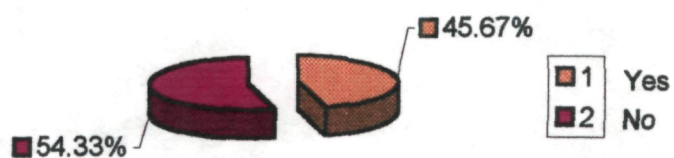
3.Whether you cast votes in the Panchayat Vidhan Sabha & Lok Sabha?



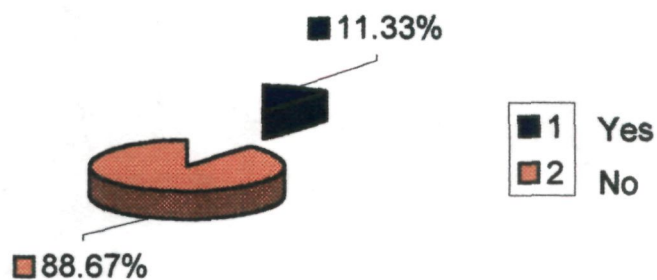
4. Whether you have ever contested non reserved seat ?



5. Whether your votes are ever purchased by pol. Parties by money or muscle strenght ?



6. Whether you had ever won only Election against open seat?



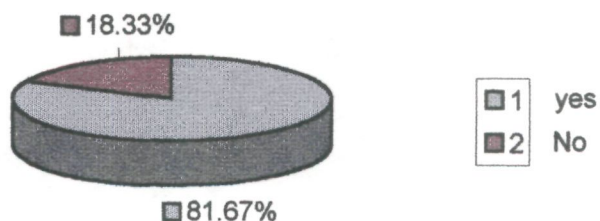
7.(I)Have you ever participated in processions,rallies etc.of the political party - MEETINGS?



7.(ii)Have you ever participated in procession,rallies etc. of the political party - PROCESSION.?



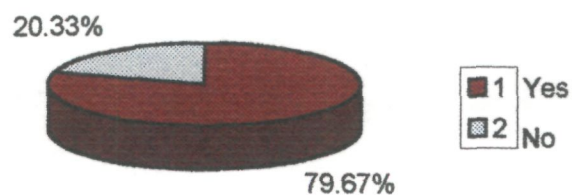
8.Have you worked for any political party in the election?



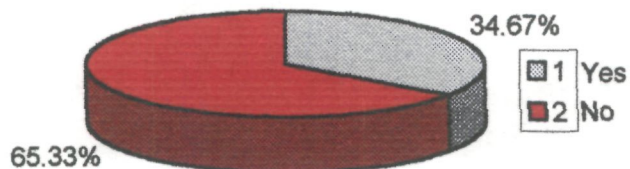
9.Are you an active worker of the political party?



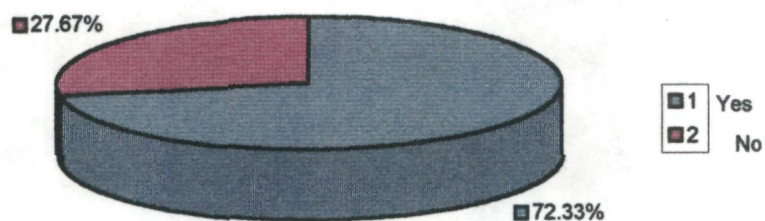
10.Is any one in your in family an active worker of pol.Party?



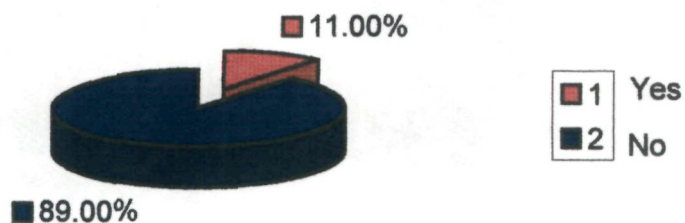
11.Whether panchayats are playing significant role in the light of constitutional commitment?



12. Are atrocities being caused by upper caste?



13. Whether police is helpful in registering a case against upper castes?



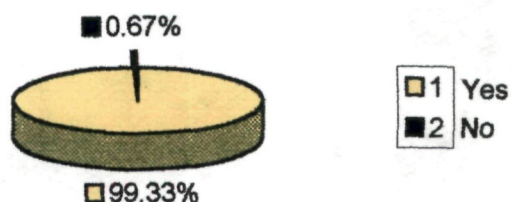
14. Are you aware of the welfare legislations and safeguards for S/C?



15. Are you aware that certain posts are reserved for s/c in public sector enterprises?



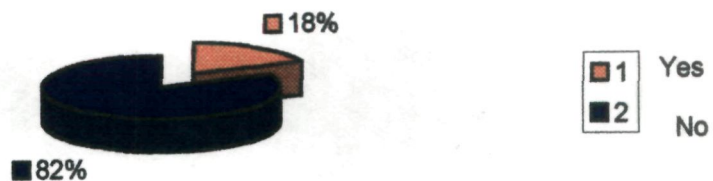
16. Are you aware that untouchability is an offence?



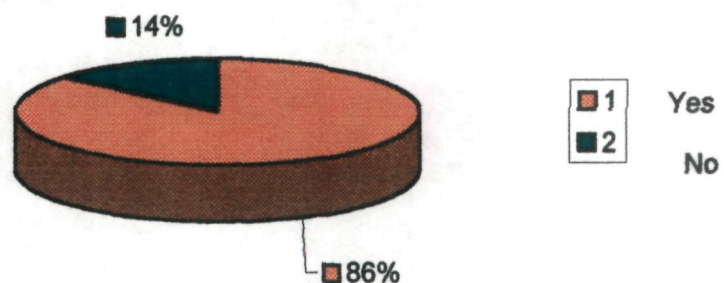
17. Are you allowed to share water from the same source?



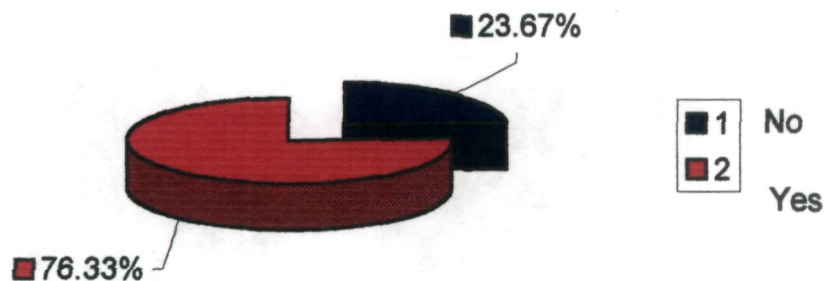
18. Are you allowed to share meals with upper castes in marriage & parties etc.?



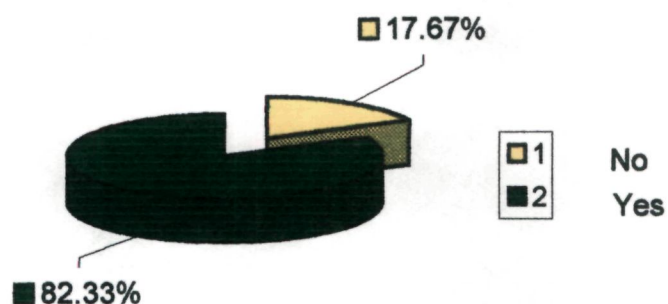
19. Are you humiliated by upper castes in your village?



20. Have you ever registered any case against upper castes on ground of humiliation?



21. Whether you have medical / health facilities in your village?



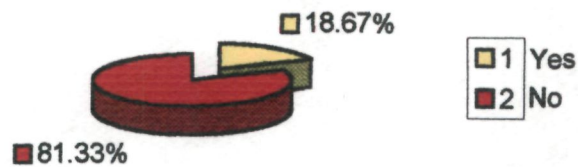
22. Whether your villages are connected by road facilities?



23. Do you have educational facilities in your village?



24.Does you or your children get help in the form of fees,copies,attendance,scholarship, uniform from the govt?



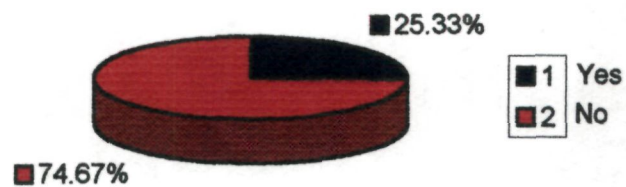
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28. Is there any female working member in your family?



29. Is she facing any sexual harassment in the office?



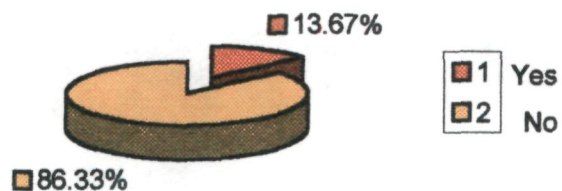
**30. Does you or your children have got
govt. jobs on the basis of reservation
policy?**



**31. Are you aware of the reservation of
jobs in govt.&public undertakings?**



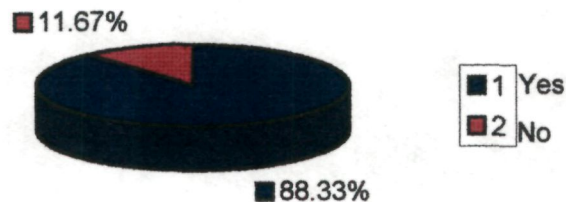
**32. Has the reservation policy enabled
the S/C to obtain jobs to a large extent?**



33.Has the reservation policy helped to get only govt. jobs and not private jobs ?



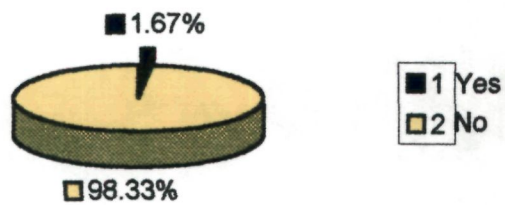
34.Is there any discrimination on the caste basis at promotion level?



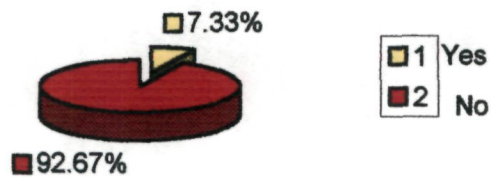
35.Have you or any member of your family ever experienced any ill treatment from upper castes of your locality ?



36. Do you think that programs are destroying your self-respect?



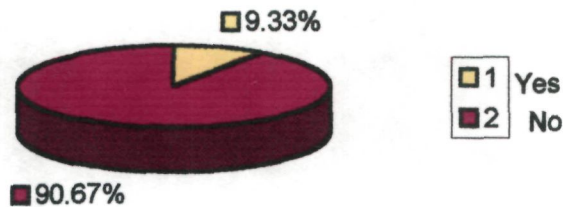
37. Whether benefits of reservation policy being reaped by all members of S/C?



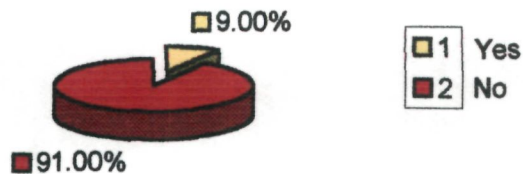
38. Do you think that the task you perform (scavenging, sweeping etc.) are degrading?



39.Are you permitted by the upper castes to enter into the temples ?



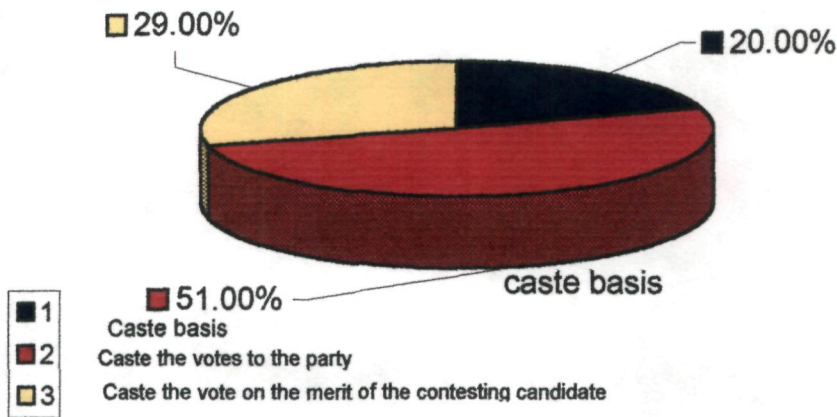
40.Do you think that untouchability offence Act 1955 (Protector of civil rights Acts ,1978)has been properly implemented?



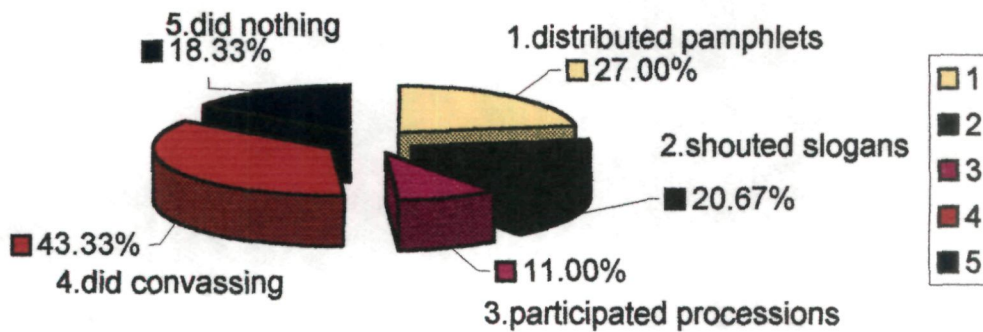
41.Do you think that providing separate housing colony ,school,drinking water facilities,the govt. has been promoting segregation of untouchables instead of promoting their integration?



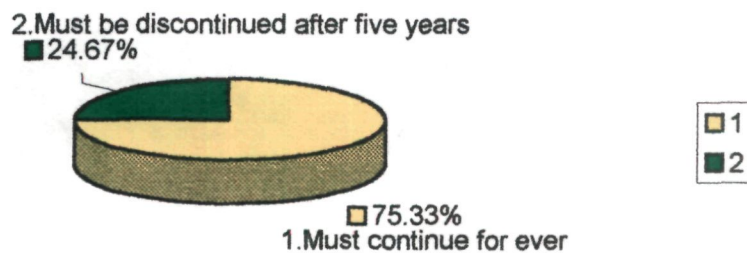
42.Criteria for casting votes in the village Election:



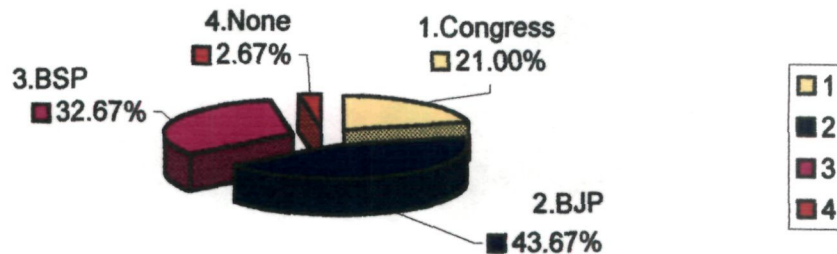
43.Manner is the S/C respondent worked for any political Party in an election:



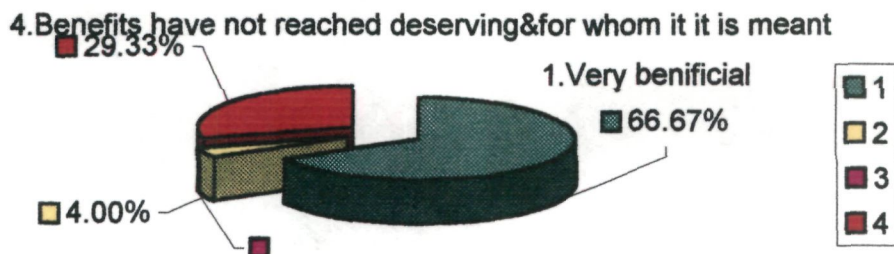
44.Whether reservation of seats in Legislature should continue:



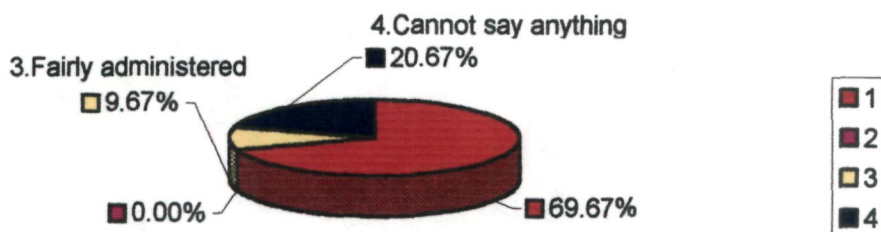
45. Party which is the well wisher of the scheduled Castes:



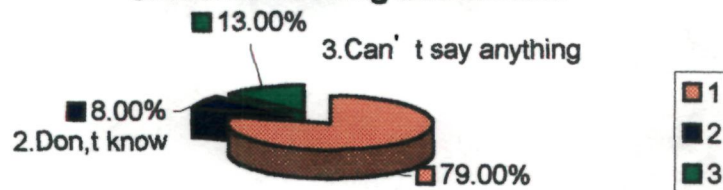
46. Whether governmental programs for the upliftment of Scheduled Castes are beneficial:



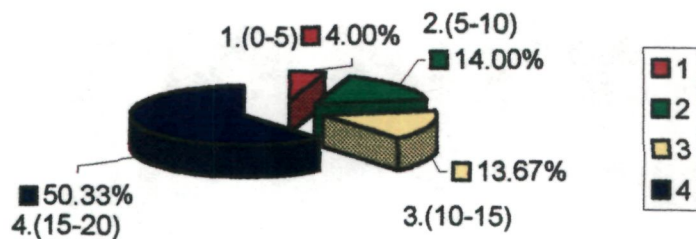
47. Whether governmental programs are properly administered:



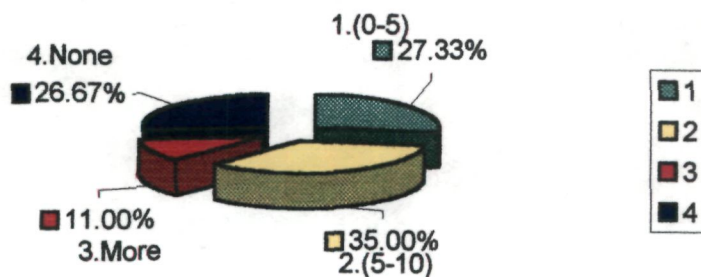
48. Whether reservation facility provided in the educational institution are adequate in terms of number of S/C students seeking admission:



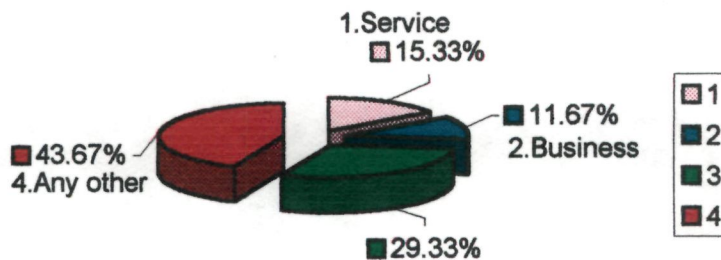
49. Size of the family of the respondents:



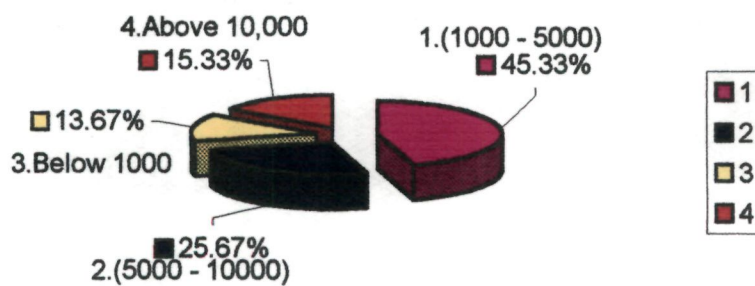
50. Size of the holding of the respondents in bighas:



51.principal source of livelihood of the respondents:



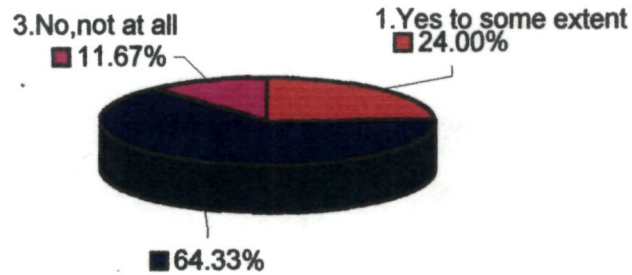
52.Annual income of the respondents which they get out of their holdings:



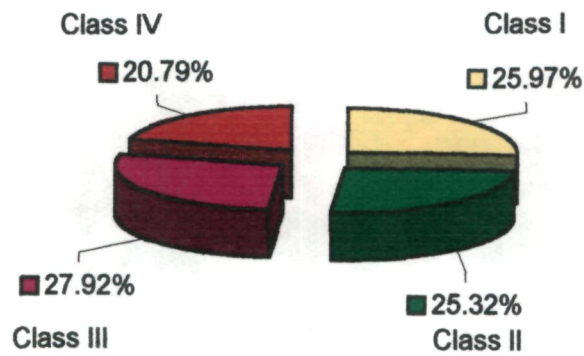
53.Members of the family of the respondent in govt. jobs:



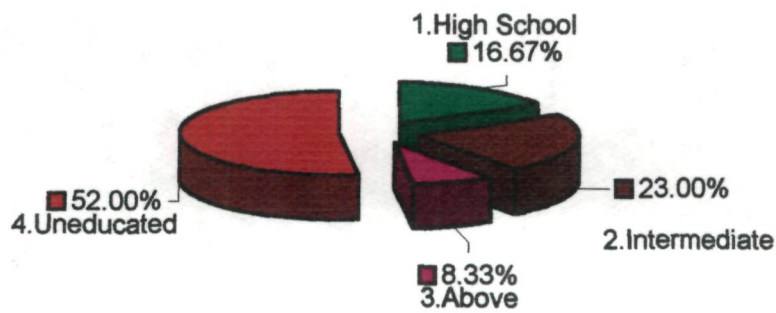
54.Effect of the behaviour of the colleagues in the office:



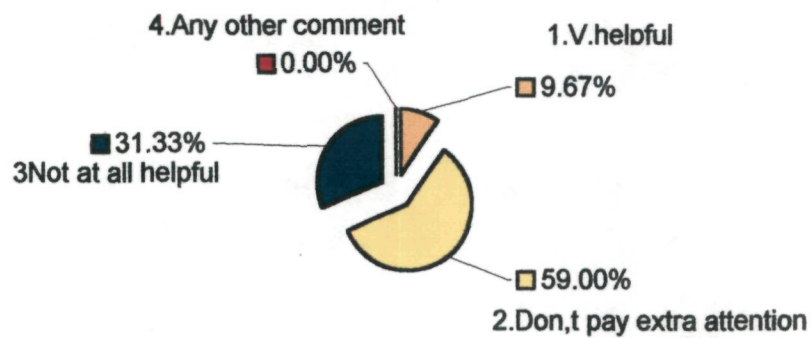
55.Nature of the govt. job of the respondents:



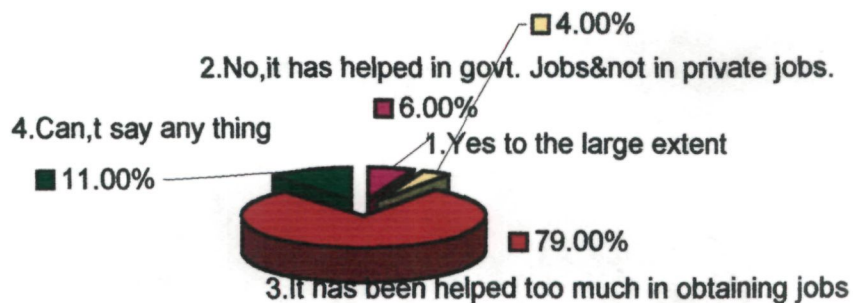
56.Educational standard of the respondent:



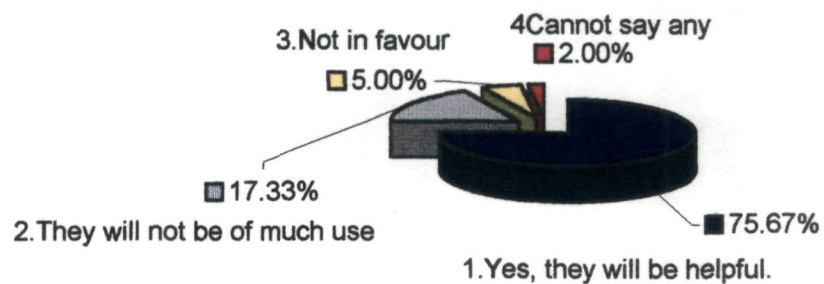
57. Attitude of the boss of the respondents:



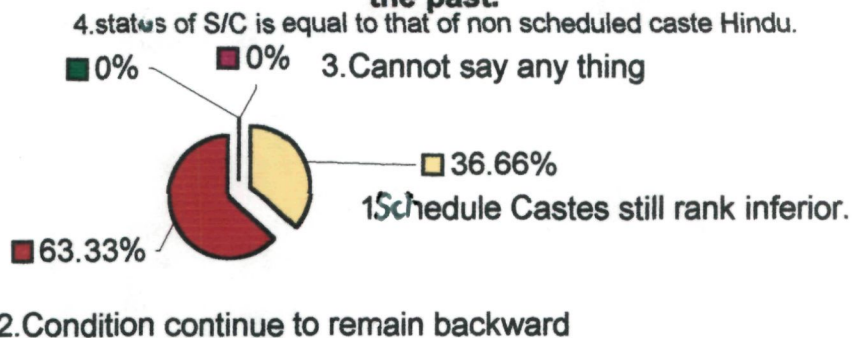
58. Do you think that the reservation policy has enabled the S/C to obtain jobs?



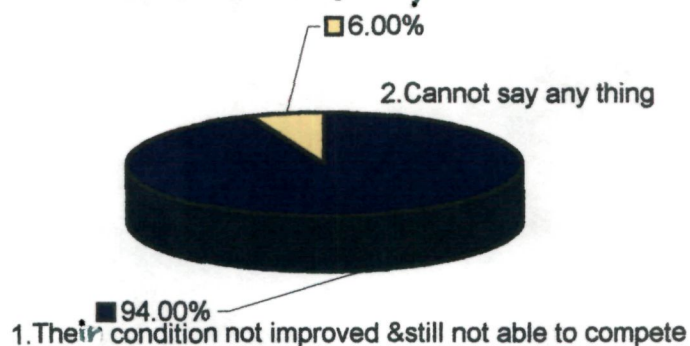
59. Are you in favour of introducing reservation in private concern.



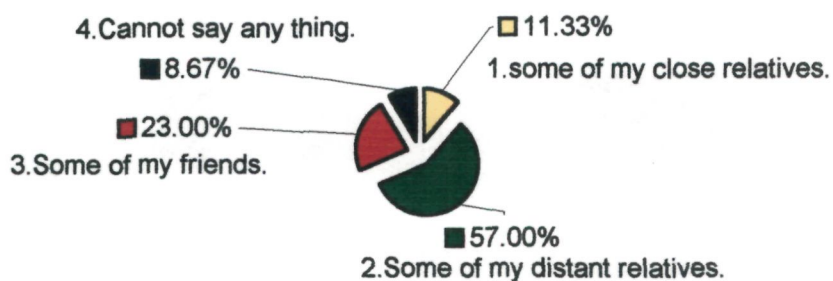
60. Is there any improvement in the condition of S/C,s by the governmental policies in the contrast to the past.



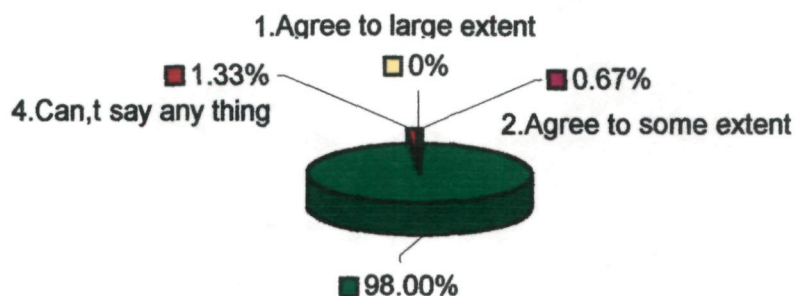
61. Whether reservation policy should continue?



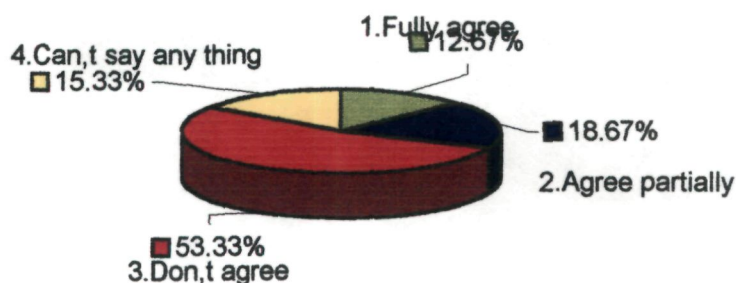
62. Family member, acquaintance or relative of the respondent on the reserved post.



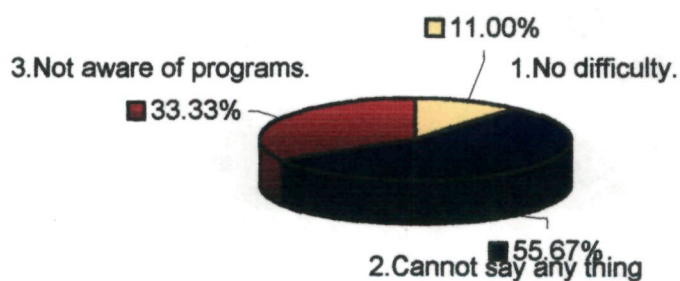
63. Do you agree that S/C have advanced so much that they don't need reservation any more.



64. Does the programs destroy the initiative of the members of these communities.

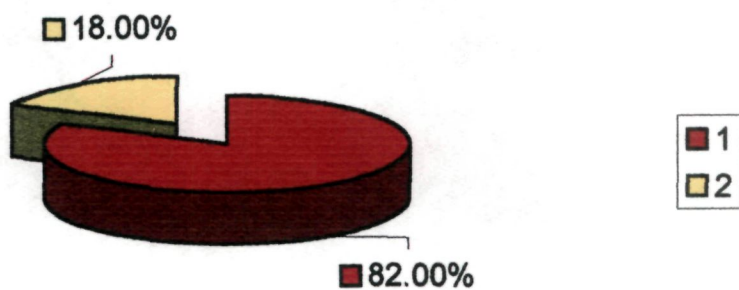


65. Have you encountered any difficulty with reference to any programs?



66.General comment & suggestions on welfare programs from the respondent.

2.It should not be given to those who are financially sound.



1.Benefits should reach the real beneficiaries

CONCLUSION AND SUGGESTIONS

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The Indian society is a caste ridden and economically imbalanced society. The evils of untouchability has been a blot on our society. Caste barriers from centuries together had led to social injustice, social isolation and economic oppression of a section of society. The age old injustice perpetuated upon the untouchables and other oppressed class of people was to be compensated through an effective and quick remedy. The constitution of India not only debarred untouchability through Article 17 but realized the urgent need of social justice through protective discrimination in favour of these classes.

The Indian constitutional philosophy is based upon the notion that certain social groups in India are inherently unequal and are victims of social discriminations and thus required compensatory treatment. At the time of independence and making of the Constitution of India one could have hardly visualized that the policy of reservation as a means of combating group inequalities would become a major source of social and political unrest. Over four decades of our experience with the quota system is only a crude strategy of social reconstruction which if mismanaged will surely lead the society to traumatic tensions.

In the modern India the extension of reservation to scheduled castes has evoked violent caste response, street violence and political conflicts. The state practice on reservation reveals that the device of reservation has become a tool of aggrandizement in the hands of politically dominant castes who always try to strike political bargains to retain the privilege of being classified as backward even at the expense of the really needy and the deserving.

Even those who are in power see the advantages in the system for winning their political supporters. Backwardness has become a vested interest and any attempt to eliminate the well off from among the ones designated as backward groups is strongly resisted. This results in caste riots and social tensions.

The successive government at the State and at the Centre have not fully discharged their obligations under the constitution, towards the poor and backward classes of people in the country. Job-reservations as a whole has been the vote-catching platter. Neither the job reservations nor the reservations of seats in the educational institutions are of material help. Unless illiteracy and poverty of the backward classes is removed, they will not be benefitted by the reservation policy alone. Affirmative action programmes on war-footing is needed for the upliftment of backward classes. Liberal grants and subsidised schemes under Article 340 read with Articles 15(4) and 46 are needed to remove illiteracy and poverty. Housing, sanitation and other basic necessities of life are to be provided. Illiteracy is the root cause of backwardness. Free and compulsory education is no where within reach even after 50 years of independence. The legislations enabling free education are only on paper. A poor father, whose child is earning and contributing towards the family income, may not send the child to school even if the education is free.

Right from the very beginning the reservation policy has been always subjected to controversy. The other who are not given reservations are of the opinion that they are in no way better economically, socially and educationally than those who are preferred by the government. The Supreme Court in its ambiguous interpretative process (In Mandal Commission Case) has further

confused the concept of caste based backwardness and the backward classes.

The basic structure of the Constitution envisages a cohesive, unified and casteless society in which casteism ossified for centuries should become merely the dust on the shelf of Indian history. The Mandal judgement fractured the nation and disregards the basic structure of the constitution. The decision had revitalized casteism, cleared the whole nation into two forward and backward classes and opened up chances for conflicts.

It is undisputed that 50 years of independence have changed the social, educational and economic landscape beyond recognition. There are crores of backward individuals in forward castes and crores of forward individuals in backward castes. The wise framers of the constitution had originally provided a period of 10 years to the Scheduled Castes and Scheduled Tribes, by extending the terms of reservations, the beneficiaries have become habitual of its dose, it is no doubt unfortunate, that the government have been forced by circumstances to increase that period through amendments to Article 334 of the constitution, first from 16 years to 20 years, from 20 years to 30 years, from 30 years to 40 years and then again from 40 years to 50 years. If the extension continues in this way then, there may be no end to the extension of this period.

To be more true the position the position of the Scheduled Castes today is neither in the interest of Schedule Castes themselves nor that of the nation as a whole. Apparently one cannot developed as a nation when a large section of society remains isolated and deprived in the overall race for developement. The nation can never achieved its proposed destiny, if a large segment of its population is not able to enjoy equality of opportunity granted as a fundamental

right to all citizens of India in the field of employment under Article 16(1) of the constitution. This can only be done by providing them all possible props and supports in order to enable them to run shoulder to shoulder with their more fortunately placed brethren in the race of national development. Unless this truth becomes clear to all concerned, we cannot afford to boast of providing equal opportunities, *inter alia* in the matter of providing employment to all alike.

Reservation should not go indefinitely. If it is prolonged for periods of time it may introduce complacency of weaker sections. By its very nature it cannot be perennial and therefore such provisions have necessarily to be transitory otherwise it may institutionalize causing more social tensions rather seeking amelioration. Reservation as an instrument of social engineering should be a device for minimizing phenomenon with the passage of time and not vice versa. The reservation strategy should be used as a medicine and not as an intoxicant. It is a means to achieve egalitarian society and not to end in itself. Consequently there must be a take off stage, when by reason of protection given to the community class or section reaches the normal level.

It is, therefore, essential that the backwardness of a class of people is bound to be revived from time to time with a view to assess the position of such class or section after they had obtained the benefit of protection of the special provision for a reasonable period. In the absence of such a review, it is possible that continuance of such special provision to benefit them would be conferring a privilege or benefit to the detriment of the class itself. This underlines the absolute need for a periodic review without which there will be no justification to maintain status quo in regard to the provisions of reservations and other beneficial treatment.

The Mandal Commission has recommended the review of the entire scheme after a period of twenty years. The span of one generation as a criterion for raising the social consciousness is generational process. Thus the commission has not moved on the promise that a class one declared as a backward is to be treated as such for all times. In order to create an egalitarian society the government should prune the lists after putting the benefitted classes to the scales of backwardness. If the scale tilts in their favour they must be de-listed immediately.

It should also be kept in mind that national resources should be mobilized. A stage must be reached when without claiming protection of backwardness, an individual may be able to get not only discriminatory treatment but also equality of justice. The policy should be re-oriented to end the reservation as early as possible since the best way for the success of this policy is to dispense it as early as possible.

The reputation of the state lies in its people. It is the National character that makes the nation. This national character is exhibited not in adopting, begging but in creating wealth out of ruins. All the policies and schemes laid down in the constitution or other legislations should be framed, carried and continued keeping this fact in view. It is very unfortunate that the politics of votes has acquired an upper hand in India for short-lived personal benefit. It is very tragic that by creating such classes in the society the parties in power are doing massive loss to national character and national pride. The political parties have misused the true road, to the nation building and they are building their own destinies by prescribing medicines worse than the disease.

The Constitution of India is a living testimony to the greatness

and vision of Dr. B.R. Ambedkar. His life was in era of great struggle against injustice and humiliation to the Dalits by caste Hindus. He came out victoriously by giving all important rights to the oppressed in the Constitution of India. In spite of all social hurdles in his way, Dr. Ambedkar rose to the greatest heights and occupied important and prestigious position in India. In fact he came and lived like a Sun and gave the light to Dalits who were living in darkness and state of slavery. He made them to realise their rights and safeguards which are incorporated in the Constitution of India. Dr. B.R. Ambedkar very well knew that unless and until the reservation in jobs, legislature and education was accorded to Dalits they would never be in a position to be equal partners in the administration of the country and they would remain oppressed and slaves forever. Dr. Ambedkar as a chief architect of the Constitution made social justice a founding faith and incorporated humanist provisions to lift the level of the lowly scheduled castes to make democracy viable on equal footing for all.

Reservation as envisaged by Dr. Ambedkar in the Constitution has been held as Fundamental Right in various cases by the Supreme Court of India under Article 16(4) and not under Article 335 where the claims of the Scheduled Castes/Scheduled Tribes have been recognised. In spite of the fact that reservation has been held as a fundamental right, its implementation seems to be a distant dream because in many government departments and universities, the policy of reservation is yet to be implemented and in most departments it is not being implemented effectively. It is strongly suggested that the parliament should make a law to punish the persons who are at fault in not implementing the policy of reservation.

Regarding reservation in legislature (Articles 330 & 332), Dr.

Ambedkar strongly advocated for such reservations in favour of SC and STs. Although he adapted a compromistic attitude by accepting the periodic review of reservation policy from interval of 25 years to 10 years with a note if it was considered necessary to extend the period at the end of ten years. Dr. Ambedkar was very much conscious of the merit and equality. He would not allow the preferential treatment to eat away the non-discriminatory principle. Dr. Ambedkar was a man primarily responsible for bringing about social revolution to secure human dignity for the oppressed. The present study establishes that inspite of various welfare programmes and constitutional safe guards for the oppressed classes, the oppressed sections of our society are where they were five centuries ago. This unchecked and uncarred implementation of reservation policy a developing towards social disequilibrium instead of functioning as an engine of social engineering. It is a matter of grave concern that no government has so far conducted any analytical study to determine the real impact of reservation policy. The government must justify the extension of privileges on the basis of the factual studies of the society. The reservation policy requires urgent re-structuring so that the down trodden get assimilated in the national main stream with a view to give impetus to the concept of social justice. What is required to make the policy judicious and reasonable and to spread the benefits of reservation to wider section. By this the unfulfilled dream of Dr. B.R. Ambedkar will come true.

SUGGESTIONS

The following suggestions are mooted in order to make the reservation policy judicious and reasonable. The benefits should be extended to the wider sections of the society so as to make the policy of reservation serve its real purpose.

1. Only one generation should be permitted the benefit of reservation and the exceptional provisions and schemes even if envisaged by the constitution should not be made a general and permanent feature.
2. Any privilege if dooled out permanently makes the beneficiary a privileged class and gives wrong signals to others. This situation effects adversely the social harmony of the nation.
3. Its gain should not at all be allowed to be concerned by a few who are already better off. Periodic review is necessary. Once a person has been benefitted, he should not be further provided with this protective umbrella. The umbrella should be shifted to others who needs its protection and this process should continue for one generation only. The benefits of reservation should be given only once that is either at the stage of admission, or recruitment or promotion and not at every stage of one's career.
5. Classifications of backward classes should be dictated by different factors at different statges. A class which is declared as backward may turn out to be the most advanced in a particular region or state. One who is economically poor shall be considered as backward because other norms of advancement are dependent upon this very factor.
6. There must be some independent committee to review of the decision made by any government declaring the list of backward classes. In most cases this is political expediency.
7. Empirical studies should be conducted by the social scientists and the lawyers to assess the attainments of the members of that class in different walks of life. If such study reveals that

the backwardness of a class has ceased to exist, the class should be removed from the orbit of backwardness. Further, the government which is certainly interested in the protection of merit and efficiency in general administration and expertise in specific branches of services must maintain a balance between merit and concession.

8. A permanent National Commission for backward classes which must carry out sociological and economic study from state to state and from region to region with in a state must be established. This commission shall look after the adjustment and re-adjustment of programmes in proportion to the nature, degree and extend of backwardness. All such programmes must stand the test of judicial review whenever challenged. The framers of the constitution by enacting Article 340 clearly envisaged the setting up of such high powered National Commission for backward classes at the centre. Following the apex court's pronouncement in Mandal case, the government of India appointed the permanent commission on backward classes under Justice R.N. Prasad.
9. It is an ultimate goal of having a casteless and classless society is to be attained, the lists of Scheduled Castes and Scheduled Tribes would have to be reduced from year to year and replaced in due course by a list based on criterion of income cum merit. The unfortunate trend of expanding the lists; obviously under communal pressure is not a healthy sign. A bold step in arresting this trend in the need of time such is the mandate of the constitution and imperative for building an egalitarian society.
10. The advisory committee for the revision of the lists of

Scheduled Tribes appointed by the Central Government in 1965, had also suggested that more advanced communities in the lists be gradually de-scheduled and a dead line be fixed when these lists would totally be dispensed within the interests of complete integration of the Indian population.

11. The creamy layer among the backward classes must be excluded with a progressive reduction in the percentage of reservation.
12. Exclusion from reservations all those either of whose parents is/was employed in higher grades (A or B) or is a qualified professional as doctor, engineer etc. or an income tax or sales tax assessee, or a owner of more than eight hectares of rainfed dry land or its equivalent and also all those either of whose parent is a graduate.
13. Setting up a permanent committee for making reservation scheme, self operative and self-regulatory by evaluating the process of each of the castes/communities included in the backward castes every year.
14. Creating conditions for the advancement of the backward classes through literacy and poverty eradication, educational and economic improvement programmes rather than substituting such programs by mere reservations from which in any case only a selected few are to be benefitted and not the bulk of backward classes.
15. Persons getting benefits of reservations through corrupt practices must be dealt severely. Acquisition of false caste certificates be made a cognizable offence punishable with imprisonment upto two years and fine. Punishment should also reach all the accomplices including the issuing authorities

and forfeiture of all benefits secured through such certificates should be made compulsory

16. Placing an income limit of a reasonable level i.e. communiting cum-means-test and excluding persons/families above that income limit is tightly desirable step. Such a step would also serve to reduce the division of society on the caste lines.
17. Reservations contained in Articles 15(4) and 16(4) of the Constitution of India being exceptions should not be permanent and should be restricted to only one generation. This will ensure the benefits of reservations to those who are genuinely needy.
18. Caste cannot be the sole criterion for ascertaining or identifying the backward classes for the purpose of Article 15(4) and 16(4). Article 16(4) speaks of class and not caste and the two are different. If the goal be a casteless society delineation on the basis of castes as such is bound to prove counter productive.
19. The backwardness which is relevant for the purpose of Article 15(4) can also be treated as relevant under Article 16(4). Adequacy of representation in state service is the main factor to be kept in mind while making a provision under Article 16(4).
20. As the present scheme is not satisfactory, identification of real backwardness on purely secular and economic principles without perpetuating the evil of caste element (which Mandal case has provoked) is necessary.
21. As and when a group which has enjoyed the fruits of reservations and has become fairly advanced comparable with

other advanced sections of the society, it has to be ousted from the bracket of the backward classes. It will not only be in the interest of the general public but also in the interest of that particular group itself.

22. Backwardness for the purpose of protective discrimination must be decided on the economic considerations, and caste should not be the sole or dominant criteria for deciding backwardness. The decisions of **Balaji, Chitralkha and State of Kerala v. Krishna Kumari** cases should be the guiding force and those of **Rajendra and Jaya Shree** cases be properly corrected.
23. The consumers of protective discrimination must be based on sociological research and collection of data etc.
24. A proper balance must be maintained between the safeguards to backward classes and general social good. In this connection the decision in **Balaji case** should be strictly adhered.
25. Instead of providing 'quota system', it would be ideal if the preparatory preferences are awarded to backward classes of the people. In this respect both the government and judiciary should draw inspiration from case instead of providing 'quota system' emphasis protective discrimination and preferential treatment.
26. The constitution should be amended, all extensions or prolongations of reservation should be done by the act of legislation and not by executive decree. If the act is based on any report it should be released to press at least three months before the bill is introduced in the legislature.

27. Many educated and well of dalits think that the situation has improved and now and that there is nothing to worry in future. They should realise that whatever they are today is because of reservation policy secured by Dr. Baba Saheb Ambedkar. The educated dalits should understand the importance of reservation policy. They should educate the ignorant masses who got them the reservation, why it is required and how it will make an egalitarian society and how to make it more effective and fruitful. They should realise that it is the key for social justice.
28. The Dalits must realise they are not only Hindu, but the original inhabitants of this nation. Any socially educated person will like to live with dignity and identity. Just accepting the fact is not good. The Dalit should find the solution themselves since they do not have Ambedkar now. it is the responsibility of the educated dalits not only to realise the above but also to educate the rest of dalit masses.
29. The next important thing is to "pay back to the society". Dr. Ambedkar expected the Dalits to contribute at least five percent of their earnings for the development of the society. Unless the whole society is reformed, they will never be respected in the society, howsoever wealthy or educated one may be. Educated dalits should make it a habbit to contribute at one percent of their earning for the welfare of the backward society.
30. The educated Dalits should propagate the irrational and slavery aspects of Hinduism and never ending sufferings in it and prepare the masses towards obtaining a separate identity out side Hindu fold. The Dalits should be educated and they

should be communicated the importance of benefits of reservation policy and how it can be made more effective. Sooner the educated Dalits realise their responsibilities and act accordingly, better is for them, for their society and for the country as well. They will have to struggle to get the reservation policy extended to private sectors also.

31. The doctrine of protective discrimination embodied in Article 15(4) and 16(4) and the mandate of Article 29(2) cannot be stretched beyond a particular limit. The state exists to serve its people. There are some services where expertise and skill are of essence. In such services or posts under the Union or States there can be no room for reservation of post, merit alone must be the sole and decisive consideration for appointment.

Dr. Ambedkar's vision of social justice may be achieved in reality if a serious thought is given to implement these suggestions in practice without any social or political prejudices.

ANNEXURE - I

**QUESTIONNAIRE ADMINISTERED TO THE
RESPONDENTS IN THREE DISTRICTS OF
UTTAR PRADESH
(ALIGARH, AGRA, RAMPUR)**

QUESTIONNAIRE – FORM

NAME:

AGE:

CASTE:

MALE/FEMALE

AREA/MOHALLA/DISTRICT:

EDUCATED/UNEDUCATED:

1. Are you the active member of the political organization in your village?
 (a) Yes (b) No
2. Are you a regular subscriber of fee to retain you membership in the party organization?
 (a) Yes (b) No
3. Whether you cast your votes in Panchayats Vidhan Sabha (Legislative Assembly) and Lok Sabha (House of the People)?
 (a) Yes (b) No
4. Whether you had endeavoured to contest election against non-reserved seat?
 (a) Yes (b) No
5. Whether your votes are ever purchased by the political parties by the strength of their muscle or money power?
 (a) Yes (b) No
6. Whether you had ever won any election against open seats?
 (a) Yes (b) No
7. Have you ever participated in the meetings, processions or rallies organized by any political leader or party?
 Meetings : (a) Yes (b) No
 Processions: (a) Yes (b) No
8. Have you worked for any political party in the elections?

- (a) Yes (b) No
9. Are you an active worker or sympathizer of any political party?
- (a) Yes (b) No
10. Is any one of your family member an active worker, supporter, sympathizer of political party?
- (a) Yes (b) No
11. Whether panchayats are playing a significant role in promoting the interest in the light of Constitutional Commitment?
- (a) Yes (b) No
12. Are atrocities being caused by the upper castes?
- (a) Yes (b) No
13. Whether the police is helpful in registering cases against the people of higher strata in the society.
- (a) Yes (b) No
14. Are you aware about the provisions of welfare legislations and safeguards among the Scheduled Castes?
- (a) Yes (b) No
15. Are you aware that certain posts are reserved for Scheduled Castes in the Government and Public Sector enterprises for the Scheduled Castes?
- (a) Yes (b) No
16. Are you aware that untouchability is an offence?
- (a) Yes (b) No
17. Are you allowed to share water from the same source?
- (a) Yes (b) No
18. Are you allowed to share meals with upper castes on occasion like Marriage ceremonies and such occasions of like nature
- (a) Yes (b) No
19. Are you often humiliated by the people of upper caste of your

(a) Yes

(b) No

20. Have you ever registered any cases against the members of higher castes on ground of their humiliation ?

(a) Yes

(b) No

21. Whether you have medical health facilities in your village ?

(a) Yes

(b) No

22. Whether your villages locality is connected by road facilities ?

(a) Yes

(b) No

23. Do you ^{have} educational facility in your village ?

(a) Yes

(b) No

24. Does your children get help in the from of the , copies attendance, Scholarships , uniforms , merit scholarship from the government ?

(a) Yes

(b) No

25. Have you ever recovered monetary help under various schemes from the govt.

(a) Yes

(b) No

26. Have you ever taken any loan from the banks

(a) Yes

(b) No

27. Does your children get the benefit of reservation in admission to Educational institution?

(a) Yes

(b) No

28. Is there any female working member in you family

(a) Yes

(b) No

29. Is she facing any sexual harassment by her colleagues in the office?

(a) Yes

(b) No

30. Does you children have government job on the basis of reservation policy?

(a) Yes

(b) No

31. Are you aware of reservation of jobs scheduled caste in government and public undertakings ?

(a) Yes

(b) No

32. Has the reservation policy enabled the scheduled caste to obtain jobs to a large extent ?

(a) Yes

(b) No

33. Has the reservation policy helped to get early government jobs and not private jobs ?

(a) Yes

(b) No

34. Is there any discrimination on the caste basis at promotion level ?

(a) Yes

(b) No

35. Have you or any member of your family ever experienced any ill treatment from upper castes of your locality because you belong to scheduled caste?

(a) Yes

(b) No

36. Do you think that programmes are damaging your self respect?

(a) Yes

(b) No

37. Whether the benefits of reservation policy being reaped by all the members of the scheduled castes ?

(a) Yes

(b) No

38. Do you think that the task you perform such as scavenging, sweeping public roads etc. are degrading ?

(a) Yes

(b) No

39. Are you permitted by the upper castes to enter the temples?

(a) Yes

(b) No

40. Do you think that Untouchability Offence Act, 1955 (Protector of Civil Rights Act, 1978) has been properly implemented ?

- (a) Yes (b) No

41. Do you think that by providing separate housing colony, school drinking water facilities, the government has been perpetuating segregation of untouchables instead of promoting their integration ?

- (a) Yes (b) No

42. On what criteria you cast your vote in the election?

- (a) Caste basis
(b) Cast their vote to the party
(c) Cast their vote on the basis of the merit of the contesting candidate.

43. In what manner you have worked for any political party ?

- (a) Distributed pomplets
(b) Shouted slogans
(c) Participated processions
(d) Did canvassing
(e) Did nothing.

44. Whether the reservation of seats in the legislature should continue?

- (a) Must continue for ever
(b) Must be discontinued after a period of five years.

45. Which party do you think is the well wisher of Scheduled Castes?

- (a) Congress (b) BJP
(c) BSP (d) Any other

46. Whether governmental plans for the upliftment of Scheduled Castes are beneficial?

- (a) very beneficial
(b) Fairly beneficial

- (c) Cannot say anything
- (d) Benefits have not reached the deserving and for whom it is meant

47. Whether governmental programmes are properly administered ?

- (a) Not administered Satisfactorily
- (b) Fully satisfied
- (c) Fairly administered
- (d) Cannot say anything as authorities may view bad and would trouble them.

48. Whether the reservation facilities provided in the educational institution are adequate in terms of number of Scheduled Castes seeking admission?

- (a) They are not adequate
- (b) Don't know anything
- (c) Cannot say anything

49. What is the size of your family?

- | | |
|-------------------|-------------------|
| (a) 0-5 members | (b) 5-10 members |
| (c) 10-15 members | (d) 15-20 members |

50. What is the size of the holdings in bighas?

- | | |
|----------|----------|
| (a) 0-5 | (b) 5-10 |
| (c) More | (d) None |

51. What is the principal source of livelihood?

- | | |
|-------------|---------------|
| (a) Service | (b) Business |
| (c) Farming | (d) Any other |

52. What is your Annual Income which you get out of your holdings?

- | | |
|--------------------|---------------------|
| (a) 1000-5000 Rs. | (b) 5000-10000 Rs. |
| (c) Below 1000 Rs. | (d) Above 10000 Rs. |

53. How many members of your family are in government jobs?

- (a) Below 5
- (b) Above 5
- (d) None

54. Does the behaviour of the colleagues affects you?

- (a) Yes to some extent
- (b) Yes to large extent
- (c) No, not at all.

55. What is the nature of your jobs?

- (a) Class I
- (b) Class II
- (c) Class III
- (d) Class IV

56. What is your educational standard?

- (a) High School
- (b) Intermediate
- (c) Above
- (d) Uneducated

57. What is the difference between the attitude of your boss towards you and other employees?

- (a) They are very helpful
- (b) They don't pay any extra attention on us
- (c) They are not at all helpful
- (d) Any other comment.

58. Do you think that the reservation policy has enabled the Scheduled Castes to obtain jobs?

- (a) Yes to a large extent
- (b) No, it has enabled them to secure govt. jobs and not private jobs
- (c) It has not helped too much in obtaining jobs.
- (d) Cannot say anything

59. Are you in favour in introducing reservation in private concern?

- (a) Yes they will be helpful
- (b) They will not be of much use

- (c) Not in favour
- (d) Cannot say anything

60. Is there any improvement in the condition of the Scheduled Caste by the policies of the Indian Government today in contrast to the past?

- (a) They still rank inferior to Scheduled Castes
- (b) Their condition continue to remain Backward
- (c) Cannot say anything]
- (d) Status of Scheduled Caste is equal to that of non-Scheduled Caste Hindu

61. Whether reservation policy should continue?

- (a) Their condition is not at all improved and they are still not able to compete
- (b) Cannot say anything

62. Does your friend, acquaintances or relative in the reserved post?

- (a) Some of my close relatives
- (b) Some of my distant relatives
- (c) Some of my friends
- (d) I don't know anyone holding such position.

63. Do you agree with the statement that the Scheduled Castes have become so advanced that they can stand on their own in open competitions with others and do not need reservation any more?

- (a) Agree to large extent
- (b) Agree to some extent
- (c) Do not agree
- (d) Cannot say anything

64. Does the programmes destroy the initiative of the members of these communities?

- (a) Fully agree
- (b) Agree partially

- (c) Do not agree (d) Cannot say anything

65. Have you encountered any difficulty with reference to any of the programmes?

- (a) No difficulty
(b) Cannot say anything
(c) Not aware of programmes

66. Would you like to make a general comment and suggestion on welfare programmes?

- (a) Benefits of reservation policy should reach the real beneficiaries
(b) It should not be given to those who are financially sound.

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